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2000

# ILLINOIS

## REGISTER

RULES  
OF GOVERNMENTAL  
AGENCIES



Volume 24, Issue 14  
March 31, 2000

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# ILLINOIS REGISTER

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Issue 16 - April 14, 2000: Data Through March 31, 2000  
Issue 29 - July 14, 2000: Data Through June 30, 2000  
Issue 42 - October 13, 2000: Data Through September 30, 2000  
Issue 3 - January 19, 2001: Data Through December 31, 2000 (Annual)



## INTRODUCTION

The *Illinois Register* is the official state document for publishing public notice of rulemaking activity initiated by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category. The Register also contains a Cumulative Index listing alphabetically by agency the Parts (sets of rules) on which rulemaking activity has occurred in the current Register volume year and a Sections Affected Index listing by Title each Section (including supplementary material) of a Part on which rulemaking activity has occurred in the current volume year. Both indices are action coded and are designed to aid the public in monitoring rules.

Rulemaking activity consists of proposed or adopted new rules; amendments to or repealers of existing rules; and rules promulgated by emergency or peremptory action. Executive Orders and Proclamations issued by the Governor; notices of public information required by State statute; and activities (meeting agendas, Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State agencies; is also published in the Register.

The Register is a weekly update to the *Illinois Administrative Code* (a compilation of the rules adopted by State agencies). The most recent edition of the Code along with the Register comprise the most current accounting of State agencies' rules.

The Illinois Register is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.].

## REGISTER PUBLICATION SCHEDULE 2000

Issue #	Copy Due by 4:30 p.m.	Publication Date	Issue #	Copy Due by 4:30 p.m.	Publication Date
Issue 1	December 27, 1999	January 7, 2000	Issue 28	June 26	July 7
Issue 2	January 4, 2000*	January 14	Issue 29	July 3	July 14
Issue 3	January 10	January 21	Issue 30	July 10	July 21
Issue 4	January 18*	January 28	Issue 31	July 17	July 28
Issue 5	January 24	February 4	Issue 32	July 24	August 4
Issue 6	January 31	February 14**	Issue 33	July 31	August 11
Issue 7	February 7	February 18	Issue 34	August 7	August 18
Issue 8	February 14	February 25	Issue 35	August 14	August 25
Issue 9	February 22*	March 3	Issue 36	August 21	September 1
Issue 10	February 28	March 10	Issue 37	August 28	September 8
Issue 11	March 6	March 17	Issue 38	September 5*	September 15
Issue 12	March 13	March 24	Issue 39	September 11	September 22
Issue 13	March 15	March 26	Issue 40	September 18	September 29
Issue 14	March 20	March 31	Issue 41	September 25	October 6
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Issue 16	April 3	April 14	Issue 44	October 10*	October 20
Issue 17	April 10	April 21	Issue 43	October 16	October 27
Issue 18	April 17	April 28	Issue 44	October 23	November 3
Issue 19	April 24	May 5	Issue 45	October 30	November 13**
Issue 20	May 1	May 12	Issue 46	November 6	November 17
Issue 21	May 8	May 19	Issue 47	November 13	November 27 **
Issue 22	May 15	May 26	Issue 48	November 20	December 1
Issue 23	May 22	June 2	Issue 49	November 27	December 8
Issue 24	May 30*	June 9	Issue 50	December 4	December 15
Issue 25	June 5	June 16	Issue 51	December 11	December 22
Issue 26	June 12	June 23	Issue 52	December 18	December 29
Issue 27	June 19	June 30	Issue 1	December 26*	January 5, 2001

\* Tuesday 12 noon deadline following a state holiday.

\*\* Monday publication date following a state holiday.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED RULES

TTY: (217) 524-3715  
E-mail: CFPolicy@dcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses affected: This rulemaking affects small businesses that are licensed as day care homes, day care centers, group day care homes, youth emergency centers, group homes, and child care institutions and maternity centers.
- B) Reporting, bookkeeping or other procedures required for compliance: It is necessary that small businesses identified above have reporting and bookkeeping requirements for identifying receipt of initial and ongoing lists of unsafe children's products.
- C) Types of professional skills necessary for compliance: Adequate reporting skills are required.

13) Regulatory Agenda on which this rulemaking was summarized: January 2000

The full text of the Proposed Rule begins on the next page.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED RULES

1) Heading of the Part: Children's Product Safety

2) Code Citation: 89 Ill. Adm. Code 386

Section Numbers:	Proposed Action:
386.10	New Section
386.20	New Section
386.30	New Section
386.40	New Section

4) Statutory Authority: The Child Care Act of 1969 (225 ILCS 10/5.2) and the Children's Product Safety Act (430 ILCS 125).

5) A Complete Description of the Subjects and Issues Involved: Implements Section 5.2 of the Child Care Act that prohibits any child care facility from having an unsafe children's product, as defined by the Children's Product Safety Act, on their premises on or after July 1, 2000. The Department is required to notify child care facilities, on an ongoing basis, of unsafe children's products, as determined in accordance with the Children's Product Safety Act, in plain, non-technical language that will enable each child care facility to effectively inspect children's products and identify unsafe children's products.

6) Will these proposed rules replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed rules contain incorporations by reference? No

9) Are there any proposed amendments to this Part pending? No

10) Statement of Statewide Policy Objectives: These rules do not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3].

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Susan Howell  
Department of Children and Family Services  
406 East Monroe, Station # 65  
Springfield, Illinois 62701-1498  
Telephone: (217) 524-1983



## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED RULES

TITLE 89: SOCIAL SERVICES  
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
SUBCHAPTER d: LICENSING ADMINISTRATION

PART 386  
CHILDREN'S PRODUCT SAFETY

Section 386.10	Purpose
386.20	Definitions
386.30	General Requirements
386.40	Licensing Compliance

**AUTHORITY:** Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10/5.2] and the Children's Product Safety Act [430 ILCS 125].

**SOURCE:** Adopted at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 386.10 Purpose**

The purpose of this Part is to ensure:

- that all child care facilities licensed by the Department are aware of the provisions of the Children's Product Safety Act that apply to them;
- that all child care facilities licensed by the Department conduct ongoing surveys of their premises for any unsafe children's products;
- that all child care facilities licensed by the Department have applied the appropriate remedy to any unsafe children's product discovered on their premises pursuant to the Children's Product Safety Act.

**Section 386.20 Definitions**

"Child care facility" means any person, group of persons, agency, association or organization, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody, in any facility as defined in the Child Care Act of 1969, established and maintained for the care of children. "Child care facility" includes a relative who is licensed or who applies for a license as a foster family home under Section 4 of the Child Care Act of 1969. (Section 2.05 of the Child Care Act of 1969)

"Children's product" means a product, including but not limited to a

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## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED RULES

full-size crib, non-full-size crib, toddler bed, bed, car seat, chair, high chair, booster chair, hook-on chair, bath seat, gate or other enclosure for confining a child, play yard, stationary activity center, carrier, stroller, walker, swing, or toy or play equipment, that meets the following criteria:

- the product is designed or intended for the care of, or use by, children under 6 years of age or is designed or intended for the care of, or use by, both children under 6 years of age and children 6 years of age or older; and
- the product is designed or intended to come into contact with the child while the product is used.

Notwithstanding any other provision of this definition, a product is not a "Children's product" for purposes of the Children's Product Safety Act if:

- it may be used by or for the care of a child under 6 years of age, but it is designed or intended for use by the general population or segments of the general population and not solely or primarily for use by, or the care of, a child; or
- it is a medication, drug, or food or is intended to be ingested. [430 ILCS 125/10]

"Crib" means a bed or containment designed to accommodate an infant. [430 ILCS 125/10]

"Department" means the Illinois Department of Children and Family Services. (Section 2.02 of the Child Care Act of 1969)

"Full-size crib" means a full-size crib as defined in Section 1508.3 of Title 16 of the Code of Federal Regulations regarding the requirements for full-size cribs. [430 ILCS 125/10]

"Infant", for the purposes of this Part, means any person less than 35 inches tall and less than 3 years of age. [430 ILCS 125/10]

"Licensee" means those individuals, agencies, or organizations who hold a license or permit issued by the Department of Children and Family Services.

"Licensing representative" means persons authorized by the Department under the Child Care Act of 1969 to examine facilities for licensure.

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## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED RULES

*"Non-full-size crib" means a non-full-size crib as defined in Section 1509.2 of Title 16 of the Code of Federal Regulations regarding the requirements for non-full-size cribs. [430 ILCS 125/10]*

*"Person" means a natural person, firm, corporation, limited liability company, or association, or an employee or agent of a natural person or an entity included in this definition. [430 ILCS 125/10]*

**Section 386.30 General Requirements****a) Notification**

The Department of Children and Family Services shall, on or before July 1, 2000, notify all licensed child care facilities of the applicable provisions of the Children's Product Safety Act.

**b) Information to be Provided**

1) Facilities licensed at the time of the initial notification will receive:

A) A written explanation of the relevant provisions of Section 5.2 of the Child Care Act and the Children's Product Safety Act in plain, non-technical language.

B) A comprehensive list of children's products that have been identified by the Illinois Department of Public Health as being unsafe as defined in the Children's Product Safety Act.

C) Periodic updates of the Illinois Department of Public Health's list.

2) Facilities licensed after the date of the initial notification will receive as part of their initial licensing materials:

A) A written explanation of the relevant provisions of Section 5.2 of the Child Care Act and the Children's Product Safety Act in plain, non-technical language.

B) The comprehensive list sent to providers who were licensed at the time of the initial mailing and any periodic update sent before the initial application for licensure.

C) Periodic updates of the Illinois Department of Public Health's list.

**Section 386.40 Licensing Compliance****a) Responsibility of Child Care Facilities**

1) Upon notification of the provisions of the Children's Product Safety Act, either during the initial notification process or later as part of the new licensee's application process and with each periodic update, the facility shall inspect its premises and immediately dispose of any unsafe children's products discovered.

2) This inspection shall be documented by signing and dating the

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED RULES

Department's initial notification and periodic updates in the space so designated on the notification.

3) The signed notification and any periodic updates shall be maintained in the facility's files for inspection.

**b) Responsibility of the Department**

1) During the initial or renewal licensing review, the licensing representative shall document that the facility maintains the signed and dated notifications required in this Section.

2) Upon discovering any unsafe children's product, the licensing representative shall instruct the facility to immediately dispose of the product in accordance with the Act.

3) A licensing violation shall be substantiated if a facility has failed to dispose of an unsafe children's product after being made aware of it through the written notification described in this Part.

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Licensing Standards for Child Care Institutions and Maternity Centers
- 2) Code Citation: 89 Ill. Adm. Code 404
- 3) Section Numbers: Proposed Action:  
404.37 Amendment
- 4) Statutory Authority: The Child Care Act of 1969 (225 ILCS 10/5.2) and the Children's Product Safety Act (430 ILCS 125).
- 5) A Complete Description of the Subjects and Issues Involved: Implements Section 5.2 of the Child Care Act that prohibits any child care facility from having an unsafe children's product, as defined by the Children's Product Safety Act, on their premises on or after July 1, 2000.
- 6) Will these proposed amendments replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any proposed amendments to this Part pending? No
- 10) Statement of Statewide Policy Objectives: These rules do not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3].

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Susan Howell  
Department of Children and Family Services  
406 East Monroe, Station # 65  
Springfield, Illinois 62701-1498  
Telephone: (217) 524-1983  
TTY: (217) 524-3715  
E-mail: CFPolicy@dcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

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## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- 12) Initial Regulatory Flexibility Analysis:
  - A) Types of small businesses affected: This rulemaking affects small businesses that are licensed as Child Care Institutions and Maternity Centers.
  - B) Reporting, bookkeeping or other procedures required for compliance: It is necessary that small businesses identified above have reporting and bookkeeping requirements for identifying receipt of initial and ongoing lists of unsafe children's products.
  - C) Types of professional skills necessary for compliance: Adequate reporting skills are required.
- 13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas because the rulemaking was not anticipated at the time.

The full text of the Proposed Amendment begins on the next page.

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## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
 CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
 SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

## PART 404

## LICENSING STANDARDS FOR CHILD CARE INSTITUTIONS AND MATERNITY CENTERS

Section	Purpose
404.1	Definitions
404.2	Effective Date of Standards (Repealed)
404.3	Application for License
404.4	Application for Renewal of License
404.5	Provisions Pertaining to License
404.6	Provisions Pertaining to Permits
404.7	Incorporation
404.8	Composition and Responsibilities of the Governing Body
404.9	Finances
404.10	The Administrator
404.11	Administrative Coverage
404.12	Child Care Staff
404.13	Support Personnel
404.14	Substitute Child Care Staff
404.15	Volunteers
404.16	Requirements of Professional Staff
404.17	Medical and Health Services
404.18	Social Work Staff
404.19	Teachers
404.20	Recreation Staff
404.21	Staff Training
404.22	Health Requirements for Staff and Volunteers
404.23	Background Checks
404.24	Criteria for the Admission of Children
404.25	Admission Preparation Requirements
404.26	Agreements and Consents Between Responsible Parties
404.27	Child Care Groupings
404.28	Discipline of Children
404.29	Controls
404.30	Clothing
404.31	Personal Care and Hygiene
404.32	Allowances
404.33	Education
404.34	Work and Training
404.35	Recreation and Leisure Time
404.36	Health and Safety
404.37	Food and Nutrition
404.38	

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

404.39	Professional Services
404.40	Visitation
404.41	Community Life
404.42	Religion
404.43	Termination of Residential Care
404.44	Buildings
404.45	Grounds
404.46	Equipment
404.47	Records and Reports
404.48	Records Retention
404.49	Severability of This Part

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10] and the Children's Product Safety Act [430 ILCS 125].

SOURCE: Adopted and codified at 5 Ill. Reg. 13070, effective November 30, 1981; amended at 7 Ill. Reg. 3424, effective April 4, 1983; amended at 8 Ill. Reg. 22870, effective November 15, 1984; amended at 9 Ill. Reg. 19712, effective December 20, 1985; amended at 11 Ill. Reg. 17504, effective October 15, 1987; amended at 21 Ill. Reg. 4488, effective April 1, 1997; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 404.37 Health and Safety

- a) Each child shall be examined by a physician within 30 days prior to placement in the institution unless the placement is an emergency. In an emergency placement, the physical examination shall be scheduled within 5 days after placement and completed with 15 days after placement. In all cases each child shall be screened for communicable diseases within 72 hours.
- b) Children shall be examined annually or more frequently if findings and medical opinions indicate need. Diagnosed medical problems shall be promptly treated.
- c) Dental examinations shall be given at least annually. Diagnosed dental defects shall receive prompt treatment; however, recommended orthodontics shall be referred to the child's legal guardian.
- d) In the absence of any religious exemptions, immunizations and tests shall be administered in accordance with standard medical practices and as required by the Illinois Department of Public Health.
- e) If treatment is in process for any physical impairment which requires continuing or follow-up medical attention, the parent, guardian or other facility to whom the child is discharged shall be so notified.
- f) The institution shall have a written plan for use in case of fires and natural disaster. The institution shall conduct fire and disaster drills with staff and children at least once every three months. Records of such drills shall be kept. At least once every six months,



## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- a fire marshal or other authority responsible for public safety shall view the drills.
- g) Household pets shall be inoculated as required by state and local regulations.
- h) No firearms or ammunition shall be allowed in the institution.
- i) The facility may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Licensing Standards for Day Care Centers
- 2) Code Citation: 89 Ill. Adm. Code 407
- 3) Section Numbers: 407.380  
407.390  
Proposed Action:  
Amendment  
Amendment
- 4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10/5.2] and the Children's Product Safety Act [430 ILCS 125].
- 5) A Complete Description of the Subjects and Issues Involved: Section 407.380 is being amended to implement Section 5.2 of the Child Care Act that prohibits any child care facility from having an unsafe children's product, as defined by the Children's Product Safety Act, on their premises on or after July 1, 2000. Section 407.390 is being amended to eliminate the requirement of 1,500 square feet of outdoor play space.
- 6) Will these proposed amendments replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any proposed amendments to this Part pending? No
- 10) Statement of Statewide Policy Objectives: These rules do not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3].
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Susan Howell  
Department of Children and Family Services  
406 East Monroe, Station # 65  
Springfield, Illinois 62701-1498  
Telephone: (217) 524-1983  
TTY: (217) 524-3715  
E-mail: CFPolicy@dcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

by small businesses should be identified as such.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses affected: This rulemaking affects small businesses that are licensed as Day Care Centers.

B) Reporting, bookkeeping or other procedures required for compliance: It is necessary that small businesses identified above have reporting and bookkeeping requirements for identifying receipt of initial and ongoing lists of unsafe children's products.

C) Types of professional skills necessary for compliance: Adequate reporting skills are required.

13) Regulatory agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas because: the rulemaking was not anticipated at the time.

The full text of the Proposed Amendment begins on the next page.

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
SUBCHAPTER c: REQUIREMENTS FOR LICENSURE

## PART 407

## LICENSING STANDARDS FOR DAY CARE CENTERS

Section  
407.1 Purpose (Repealed)  
407.2 Definitions (Repealed)  
407.3 Effective Date of Standards (Repealed)  
407.4 Application for License (Repealed)  
407.5 Application for Renewal of License (Repealed)  
407.6 Provisions Pertaining to the License (Repealed)  
407.7 Provisions Pertaining to Permits (Repealed)  
407.8 Organization and Administration (Repealed)  
407.9 Finances (Repealed)  
407.10 General Requirements for Personnel (Repealed)  
407.11 Child Care Director (Repealed)  
407.12 Child Care Workers and Group Workers (Repealed)  
407.13 Child Care Assistants (Repealed)  
407.14 Use of Students (Repealed)  
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407.16 Substitutes and Volunteers (Repealed)  
407.17 Background Inquiry (Repealed)  
407.18 Admission and Discharge Procedures (Repealed)  
407.19 Discipline (Repealed)  
407.20 Personal Care and Hygiene (Repealed)  
407.21 Program (Repealed)  
407.22 Equipment and Materials (Repealed)  
407.23 Grouping and Staffing (Repealed)  
407.24 Nutrition (Repealed)  
407.25 Night Care (Repealed)  
407.26 Children with Special Needs (Repealed)  
407.27 Infants and Toddlers (Repealed)  
407.28 School-Age Children (Repealed)  
407.29 Health Requirements for Children (Repealed)  
407.30 Transportation (Repealed)  
407.31 Plant and Equipment (Repealed)  
407.32 Records and Reports (Repealed)  
407.33 Confidentiality of Records and Information (Repealed)  
407.34 Records Retention (Repealed)  
407.35 Severability of This Part (Renumbered)

SUBPART A: INTRODUCTION, DEFINITIONS AND APPLICABILITY

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Section  
407.40 Purpose and Applicability  
407.45 Definitions

## SUBPART B: PERMITS AND LICENSES

407.50 Application for License  
407.55 Application for Renewal of License  
407.60 Provisions Pertaining to the License  
407.65 Provisions Pertaining to Permits

## SUBPART C: ADMINISTRATION

407.70 Organization and Administration  
407.80 Confidentiality of Records and Information

## SUBPART D: STAFFING

407.90 - Staffing Structure  
407.100 General Requirements for Personnel  
407.110 Background Checks for Personnel  
407.120 Personnel Records  
407.130 Qualifications for Child Care Director  
407.140 Qualifications for Early Childhood Teachers and School-age Workers  
407.150 Qualifications for Early Childhood Assistants and School-age Worker Assistants  
407.160 Students and Youth Aides  
407.170 Substitutes  
407.180 Volunteers  
407.190 Grouping and Staffing

## SUBPART E: PROGRAM REQUIREMENTS

407.200 Program Requirements for All Ages  
407.210 Special Requirements for Infants and Toddlers  
407.220 Special Requirements for School-Age Children  
407.230 Intergenerational Programs  
407.240 Evening, Night, Weekend and Holiday Care

## SUBPART F: STRUCTURE AND SAFETY

407.250 Enrollment and Discharge Procedures  
407.260 Daily Arrival and Departure of Children  
407.270 Guidance and Discipline  
407.280 Transportation  
407.290 Swimming and Wading

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407.300 Animals

## SUBPART G: HEALTH AND HYGIENE

407.310 Health Requirements for Children  
407.320 Hand Washing  
407.330 Nutrition and Meal Service  
407.340 Diapering and Toileting Procedures  
407.350 Napping and Sleeping  
407.360 Medications

## SUBPART H: FACILITY AND EQUIPMENT

407.370 Physical Plant/Indoor Space  
307.380 Equipment and Materials  
407.390 Outdoor Play Area

## SUBPART I: SEVERABILITY OF THIS PART

407.400 Severability of This Part  
APPENDIX A Equipment for Infants and Toddlers  
APPENDIX B Equipment for Preschool Children  
APPENDIX C Equipment for School-Age Children  
APPENDIX D Infant Daily Food Requirements  
APPENDIX E Meal Patterns and Serving Sizes for Child Care Programs  
APPENDIX F Resource Reference List  
APPENDIX G Early Childhood Teacher Credentialing Programs  
APPENDIX H Playground Surfacing and Critical Height

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10] and the Children's Product Safety Act [430 ILCS 125].

SOURCE: Adopted and codified at 7 Ill. Reg. 9215, effective August 15, 1983; amended at 8 Ill. Reg. 8713, effective June 15, 1984; amended at 8 Ill. Reg. 24937, effective January 1, 1985; amended at 16 Ill. Reg. 7597, effective April 30, 1992; emergency amendment at 20 Ill. Reg. 11366, effective August 1, 1996, for a maximum of 150 days; amended at 21 Ill. Reg. 923, effective January 15, 1997; amended at 22 Ill. Reg. 1728, effective January 1, 1998; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 407.380 Equipment and Materials

a) Equipment and materials for both indoor and outdoor use shall be appropriate to the age and developmental needs of the children served. The day care center may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the

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- Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).
- b) Such equipment and materials for infants, toddlers and pre-school children shall be provided in the quantity and variety specified in Appendix A: Equipment for Infants and Toddlers, Appendix B: Equipment for Preschool Children and Appendix C: Equipment for School-Age Children.
  - c) The day care center shall have a method to communicate with persons who are hearing impaired such as a telecommunication device for the deaf (TDD) or the Illinois Relay Center (see Appendix F). Furniture and equipment shall be adapted, when necessary, for individual children's use.
  - d) Play materials shall be durable and free from hazardous characteristics, including sharp or rough edges and toxic paint. In areas where infants and toddlers play and sleep, there shall be no objects that are less than 1 1/4 inches in diameter or that have removable parts of this size.
  - e) Durable, safe and appropriately sized furnishings and equipment shall be provided, including:
    - 1) Chairs and benches of appropriate size for each age group served. If chairs or benches are upholstered or padded, the furniture must meet the requirements of the Furniture Fire Safety Act [425 ILCS 45] and 41 Ill. Adm. Code 1007 (Fire Prevention and Safety) and 41 Ill. Adm. Code 3007 (Furniture Fire Safety Regulations).
    - 2) Tables of height and size to accommodate comfortably a group of ten or fewer children.
    - 3) Low, open shelves for play materials and books within easy reach of the children.
    - 4) Individual lockers, cubicles or separate hooks and shelves for children's personal belongings.
  - f) Storage shall be provided for surplus toys and supplies not currently in use.
  - g) Equipment, table tops, play materials and classroom surfaces shall be maintained in sound, clean conditions at all times.
    - 1) Toys and equipment that are placed in children's mouths or are otherwise contaminated by body secretions or excretions shall be set aside to be cleaned with water and detergent, rinsed, sanitized and air-dried before handling by another child. Machine-washable cloth toys may be used and shall be machine-washed at least weekly and when contaminated.
    - 2) Water tables and toys used in water tables shall be emptied daily and cleaned with a mild germicidal solution before being air-dried. Children and staff shall wash their hands before using the water table.
  - h) Extension cords meeting Underwriters Laboratories or equivalent standards may be used provided that they are inaccessible to children

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- i) and do not present any safety hazard.
- j) Poisonous or potentially harmful plants shall be inaccessible to children.
- k) First-aid kits shall be maintained and readily available for use.
  - 1) Centers with a capacity of fewer than 100 children shall maintain at least two first-aid kits, a kit for on-site use and a travel kit for use on outings. Centers with a capacity of 100 or more children shall maintain at least three first-aid kits.
  - 2) When a program operates in various parts of a building or on more than one floor, a separate first-aid kit shall be maintained in each area or floor.
  - 3) The supplies for each first-aid kit shall be stored in a closed container which is clearly labeled as first-aid supplies and stored in a place that is accessible to child care staff at all times but out of the reach of children.
  - 4) The on-site first-aid kits shall contain the following supplies, at a minimum:
    - A) Disposable latex gloves;
    - B) Scissors;
    - C) Tweezers;
    - D) Thermometer;
    - E) Bandage tape;
    - F) Sterile gauze pads;
    - G) Flexible roller gauze;
    - H) Triangular bandage;
    - I) Safety pins;
    - J) Eye dressing;
    - K) Pen/pencil and note pad;
    - L) Cold pack;
    - M) Adhesive bandages; and
    - N) Current American Academy of Pediatrics or American Red Cross standard first-aid text or an equivalent first-aid guide.
- 5) The travel first-aid kits for use on outings shall contain the above supplies (a first-aid chart may replace the required text) plus the following additional items:
  - A) Water;
  - B) Soap;
  - C) Antiseptic cream or solution;
  - D) Telephone number of the child care center (preferably on a laminated card); and
  - E) Coins for use in a pay phone.
- 6) First-aid kits shall be restocked after use, and an inventory shall be taken at least annually and recorded.
- 7) In addition to the full first-aid kit maintained at the center, each individual classroom shall stock a supply of latex gloves and adhesive bandages and restock these supplies as needed.

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- 8) The telephone number for Poison Control shall be posted at each telephone (1-800-947-5969).

k) Day care centers are not required to have a portable fire extinguisher. However, if the day care center installs a portable fire extinguisher of its own volition, the extinguisher must be installed, tested, maintained, and tagged by businesses licensed by the Office of the State Fire Marshal under the Fire Equipment Distributor and Employee Regulation Act [225 ILCS 215] and 41 Ill. Adm. Code 2507 [Fire Equipment Distributor and Employee Standard].

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 407.390 Outdoor Play Area

a) An outdoor play area shall be provided unless the program operates less than three hours per day in accordance with Section 407.200(d)(3) or a waiver has been granted by the Department in accordance with subsection (q) of this Section.

b) The requirements for outdoor play areas shall be met immediately, except for equipment and protective surfaces installed by the center before the effective date of this Part, and shall fully comply with this Part no later than 36 months after the effective date. Fences around play areas which are newly installed or replaced after the effective date of this Part must comply with the requirements of this Section.

c) The outdoor play area shall accommodate 25 percent of the licensed capacity at any one time ~~but shall be no less than 1500 square feet of useable activity/play space.~~

d) There shall be a minimum of 75 square feet of safe outdoor area per child for the total number of children using the area at any one time. Children under the age of 24 months shall not use a common outdoor play area at the same time as children ages three or older.

e) Play space shall be in a well-drained area.

f) All play space shall be fenced or otherwise enclosed or protected from traffic and other hazards. Fences shall be at least 48 inches in height (for fences installed or replaced after January 1, 1998). Fences shall be constructed in such a way that children cannot exit without adult supervision. Corral-type fences and fences made of chicken wire shall not be used. Play areas for children under two years of age shall be enclosed so that the bottom edge is no more than 3 1/2 inches above the ground and openings in the fence are no greater than 3 1/2 inches.

g) The outdoor play area shall be adequately protected from traffic, water hazards, electrical transformers, toxic gases and fumes, railway tracks and animal hazards.

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h) The outdoor play area shall be arranged so that all areas are visible to staff at all times.

i) Protective surfaces (wood mulch, bark mulch, sand, gravel, rubber mats, etc.) shall be provided in areas where climbing, sliding, swinging or other equipment from which a child might fall is located.

1) The protective surface shall extend at least six feet beyond the perimeter of the equipment, except for swings.

A) For single-axis (traditional) swings, the protective surface shall extend both forward and backward a distance of at least two times the height measured from the supporting bar.

B) For tire swings which rotate, the protective surface shall extend six feet beyond the farthest reach of the tire in all directions.

2) The protective surface shall have a Critical Height value of at least the height of the highest accessible part of the equipment, unless rubber mats are used which have been manufactured specifically for this purpose and which comply with the requirements established by the Consumer Products Safety Commission or the American Society for Testing Materials. See Appendix H for Critical Height values.

3) The surface material shall be properly drained to prevent the growth of molds and bacteria.

4) When resilient materials become packed, they shall be raked and/or turned to restore resilience.

j) A surface shall be provided that is suitable for children's wheeled vehicles and pull toys.

k) There shall be a shaded area in the summer to protect children from excessive sun exposure. Equipment with smooth metal surfaces, such as slides, shall be in an area that is shaded during the summer or shall be placed in a north/south alignment. Equipment permanently affixed on January 1, 1998 shall be accepted if otherwise determined safe. Procedures shall be in place to prevent children from being burned if the metal surface is too hot.

l) The areas and play equipment shall be maintained in a safe, clean and sanitary manner.

1) The equipment in the outdoor play area shall be of safe design and in good repair.

2) The equipment shall be free of sharp points or corners, splinters, protruding nails or bolts, loose or rusty parts, hazardous small parts, broken glass, lead-based paint or other poisonous materials.

3) All bolts, hooks, eyes, shackles, rungs and other connecting and linking devices used on playground equipment shall be designed and secured to prevent loosening or unfastening.

4) Outdoor equipment shall be situated to avoid collisions and accidents while still permitting freedom of action by the

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- children.
- 5) Supports for climbing apparatus and large equipment shall be securely fastened to the ground.
  - 6) Access to play equipment shall be limited to age groups for which the equipment is developmentally appropriate according to the manufacturer's instructions.
  - 7) Swings, if used, shall have seats of rubber or impact-absorbing material and design. Wood or metal seats shall not be used.
  - 8) Crawl spaces, such as tunnels, shall be short and wide enough to permit access by adults.
  - 9) All pieces of playground equipment used by children five years of age and younger shall be designed to guard against entrapment or situations that may cause strangulation.
    - A) Openings in exercise rings shall be smaller than 4 1/2 inches or larger than nine inches in diameter.
    - B) There shall be no openings in a play structure with a dimension between 3 1/2 inches and 9 inches (except for exercise rings). Side railings, stairs and other locations that a child might slip or climb through shall be checked for appropriate dimensions.
    - C) Distances between vertical slats or poles, where used, must be 3 1/2 inches or less (to prevent head entrapment).
    - D) No opening shall form an angle of less than 55° unless one leg of the angle is horizontal or slopes downward.
    - E) No opening shall be between 3/8 inch and one inch in size (to prevent finger entrapment).
  - 10) Sandboxes, if smaller than 100 square feet, shall be covered when not in use. Larger sand play areas shall be covered, or there shall be a written plan for the daily raking and cleaning of animal fecal matter, if present.
  - 11) Areas for sand play shall be distinct from the landing areas surrounding slides and other equipment.
  - m) The center director or designee shall inspect the playground daily before children go out to play to ensure there are no hazards present.
  - n) Prior approval of the Department is required when play space not connected with the center is used to meet the requirements of subsections (a) through (l) of this Section in lieu of the center's own play space. Proposed use of a nearby park, school yard or other alternative shall be considered on a case-by-case basis in consultation with local health and safety officials, with consideration given to the following criteria:
    - 1) Location;
    - 2) Accessibility to children and staff by foot or the availability of push carts or other means of transporting infants and toddlers;
    - 3) Age(s) of the children in the group(s);

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- 4) Availability of appropriate equipment;
- 5) Traffic patterns of vehicles and people in the area;
- 6) Condition of the park in areas related to safety;
- 7) Usage of the park by other groups when the children would be most likely to use it;
- 8) Compliance with the requirements of subsections (a) through (m) of this Section.
- o) If an area not connected with the center is used for play or recreation, the children shall be closely supervised both during play and while traveling to and from the area.
- p) Roof-top playgrounds are permissible only if the playground is completely surrounded by a non-climbable fence at least eight feet in height which has no openings of any kind, a structural clearance for the use of the roof as a play area has been obtained, and the Office of the State Fire Marshal or the Chicago Fire Department's Fire Prevention Bureau has approved in writing the use of the roof as a playground.
- q) The Department may grant a waiver of the outdoor play area requirement under the following conditions:
  - 1) The facility is located in an urban area where suitable, safe outdoor space is not available;
  - 2) The facility has an indoor activity room that provides 75 square feet per child for at least 25% of the licensed capacity of the facility and is used for gross motor play in lieu of outdoor space; and
  - 3) Parents are given notification of this waiver in writing upon enrollment of their children.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



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NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Licensing Standards for Day Care Homes
- 2) Code Citation: 69 Ill. Adm. Code 406
- 3) Section Numbers: Proposed Action:  
406.16 Amendment
- 4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10/5.2] and the Children's Product Safety Act [430 ILCS 125].
- 5) A Complete Description of the Subjects and Issues Involved: Implements Section 5.2 of the Child Care Act that prohibits any child care facility from having an unsafe children's product, as defined by the Children's Product Safety Act, on their premises on or after July 1, 2000.
- 6) Will these proposed amendments replace an emergency rule currently in effect? No
- 7) Does this amendment contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any proposed amendments to this Part pending? No

- 10) Statement of Statewide Policy Objectives: These rules do not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3].

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Susan Howell  
Department of Children and Family Services  
406 East Monroe, Station # 65  
Springfield, Illinois 62701-1498  
(217) 524-1963  
TTY: (217) 524-3715  
E-mail: [CFPolicy@dcfs.state.il.us](mailto:CFPolicy@dcfs.state.il.us)

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 12) Initial Regulatory Flexibility Analysis:

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- A) Types of small businesses affected: This rulemaking affects small businesses that are licensed as Day Care Homes.
- B) Reporting, bookkeeping or other procedures required for compliance: It is necessary that small businesses identified above have reporting and bookkeeping requirements for identifying receipt of initial and ongoing lists of unsafe children's products.
- C) Types of professional skills necessary for compliance: Adequate reporting skills are required.
- 13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas because the rulemaking was not anticipated at the time.

The full text of the Proposed Amendment begins on the next page.

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## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

PART 406  
LICENSING STANDARDS FOR DAY CARE HOMES

Section	Purpose
406.1	Definitions
406.2	Effective Date of Standards (Repealed)
406.3	Application for License
406.4	Application for Renewal of License
406.5	Provisions Pertaining to the License
406.6	Provisions Pertaining to Permits
406.7	General Requirements for Day Care Homes
406.8	Characteristics and Qualifications of the Day Care Family
406.9	Qualifications for Assistants
406.10	Substitutes
406.11	Admission and Discharge Procedures
406.12	Number and Ages of Children Served
406.13	Health and Medical Care
406.14	Discipline of Children
406.15	Activity Requirements
406.16	Nutrition and Meals
406.17	Transportation of Children by Day Care Home
406.18	Swimming
406.19	Children with Special Needs
406.20	School Age Children
406.21	Children Under 30 Months of Age
406.22	Night Care
406.23	Records and Reports
406.24	Confidentiality of Records and Information
406.25	Cooperation with the Department
406.26	Severability of This Part
406.27	Meal Pattern Chart for Children 0 to 12 Months of Age
APPENDIX A	Meal Pattern Chart for Children Over One Year of Age
APPENDIX B	Background of Abuse, Neglect, or Criminal History Which May Prevent Licensure or Employment in a Day Care Home
APPENDIX C	Prevent Licensure or Employment in a Day Care Home

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10], the Children's Product Safety Act [430 ILCS 125], Section 3 of the Abused and Neglected Child Reporting Act [325 ILCS 5/31], and Sections 1 and 2 of the Facilities Requiring Smoke Detectors Act [425 ILCS 10/1 and 2].

SOURCE: Adopted and codified at 7 Ill. Reg. 7855, effective July 1, 1983;

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amended at 8 Ill. Reg. 24951, effective January 1, 1985; amended at 9 Ill. Reg. 2454, effective March 1, 1985; emergency amendment at 15 Ill. Reg. 15088, effective October 8, 1991, for a maximum of 150 days; modified at 16 Ill. Reg. 2269; amended at 16 Ill. Reg. 7602, effective April 30, 1992; amended at 18 Ill. Reg. 5531, effective April 1, 1994; amended at 19 Ill. Reg. 2765, effective February 23, 1995; amended at 21 Ill. Reg. 4524, effective April 1, 1997; emergency amendment at 24 Ill. Reg. 4207, effective March 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 406.16 Activity Requirements

- a) The caregiver and parent shall discuss the child's health, development, behavior and activities to ensure consistency in planning for the child.
- b) The daily activities shall be well-balanced and geared to the needs of the children served.
  - 1) The activities shall be informal, providing a family atmosphere that promotes the physical and emotional well-being of the individual.
  - 2) Children shall be encouraged to participate in age appropriate household routines such as preparing food, setting tables, and cleaning up.
  - 3) Regularity in routines such as, but not limited to, eating, napping, and toileting, with sufficient flexibility to respond to the needs of the individual shall be provided.
  - 4) A balance of active and quiet play shall be provided.
  - 5) There shall be activities, both indoors and outdoors, in which children make use of both large and small muscles.
  - 6) There shall be a variety of chores and activities at the child's developmental level.
  - 7) Each child's individuality shall be respected and a sense of self and development of self esteem shall be encouraged.
  - 8) Children shall not be left unattended and supervision shall be provided at all times.
- c) The materials and equipment and their arrangements and use must be appropriate to the developmental needs of the children in care. The day care home may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).
- 1) Simple play equipment, suitable to the age and developmental needs of the children, shall be available for use indoors and outdoors.
- 2) Materials and toys shall be kept clean, orderly, attractive, and accessible to the children.

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- 3) There shall be stimulating play and learning materials; these may include household items used creatively.
- 4) Materials and equipment must be of sufficient quantity to provide for a variety of experiences and to appeal to the individual interests of the children under care.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Licensing Standards for Foster Family Homes
- 2) Code Citation: 89 Ill. Adm. Code 402
- 3) Section Numbers: Proposed Action:  
402.8 Amendment
- 4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10/5.2] and the Children's Product Safety Act [430 ILCS 125].
- 5) A Complete Description of the Subjects and Issues Involved: Implements Section 5.2 of the Child Care Act that prohibits any child care facility from having an unsafe children's product, as defined by the Children's Product Safety Act, on their premises on or after July 1, 2000.
- 6) Will these proposed amendment replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendment contain incorporations by reference? No
- 9) Are there any proposed amendments to this Part pending? No
- 10) Statement of Statewide Policy Objectives: These rules do not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3].
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Susan Howell  
Department of Children and Family Services  
406 East Monroe, Station # 65  
Springfield, Illinois 62701-1498  
(217) 524-1983  
TTY: (217) 524-3715  
E-mail: CFPolicy@dcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 12) Initial Regulatory Flexibility Analysis:



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- A) Typed of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required of compliance: None

- C) Types of professional skills necessary for compliance: None

- 13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas because: the rulemaking was not anticipated at the time.

The full text of the Proposed Amendment begins on the next page.

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TITLE 89: SOCIAL SERVICES  
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
SUBCHAPTER c: REQUIREMENTS FOR LICENSURE

## PART 402

## LICENSING STANDARDS FOR FOSTER FAMILY HOMES

Section	Purpose
402.1	Definitions
402.2	Effective Date of Standards (Repealed)
402.3	Application for License
402.4	Application for Renewal of License
402.5	Provisions Pertaining to Permits
402.6	General Requirements for the License
402.7	General Requirements for the Foster Home
402.8	Requirements for Sleeping Arrangements
402.9	Nutrition and Meals
402.10	Business and Employment of Foster Family
402.11	Qualifications of Foster Parents
402.12	Background Inquiry
402.13	Health of Foster Family
402.14	Number and Ages of Children Served
402.15	Meeting Basic Needs of Children
402.16	Health Care of Children
402.17	Religion
402.18	Recreation and Leisure Time
402.19	Education
402.20	Discipline of Children
402.21	Emergency Care of Children
402.22	Release of Children
402.23	Confidentiality of Information
402.24	Required Written Consents
402.25	Records to be Maintained
402.26	Licensing Supervision
402.27	Adoptive Homes
402.28	Severability of This Part
402.29	

APPENDIX A	Criminal Convictions Which Prevent Licensure
APPENDIX B	Number and Ages of Children in Foster Family Home: No Child Requires Specialized Care
APPENDIX C	Number and Ages of Children in Foster Family Home: Child Requires Specialized Care

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10] and the Children's Product Safety Act (430 ILCS 125).

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SOURCE: Adopted and codified at 5 Ill. Reg. 9548, effective October 1, 1981; emergency amendment at 6 Ill. Reg. 15580, effective December 15, 1982, for a maximum of 150 days; amended at 7 Ill. Reg. 3439, effective April 4, 1983; amended at 7 Ill. Reg. 13858, effective November 1, 1983; amended at 8 Ill. Reg. 23197, effective December 3, 1984; amended at 11 Ill. Reg. 4292, effective March 1, 1987; emergency amendment at 16 Ill. Reg. 11879, effective July 13, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 267, effective December 21, 1992; emergency amendment at 18 Ill. Reg. 8481, effective May 20, 1994, for a maximum of 150 days; emergency expired on October 17, 1994; amended at 19 Ill. Reg. 1801, effective February 1, 1995; amended at 19 Ill. Reg. 9463, effective July 1, 1995; emergency amendment at 19 Ill. Reg. 10743, effective July 1, 1995, for a maximum of 150 days; emergency expired November 27, 1995; amended at 20 Ill. Reg. 1589, effective January 10, 1996; emergency amendment at 20 Ill. Reg. 3954, effective February 16, 1996, for a maximum of 150 days; emergency expired July 15, 1996; amended at 21 Ill. Reg. 4548, effective April 1, 1997; amended at 22 Ill. Reg. 205, effective December 19, 1997; amended at 23 Ill. Reg. 7877, effective July 15, 1999; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 402.8 General Requirements for the Foster Home

- a) The foster home shall be clean, well ventilated, free from observable hazards, properly lighted and heated, and free of fire hazards.
- b) The foster home may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).
- c) The water supply of the foster family home shall comply with the requirements of the local and state health departments. If the foster family home accepts children under age ten or who are developmentally disabled, the maximum hot water temperature from all showers and bathtubs shall be no more than 115° Fahrenheit. If well water is used, a copy of the Inspection Report and Compliance with Regulations shall be on file with the supervising agency.
- d) Portable space heaters may be used as a supplementary source of heat if they meet safety approval standards (Underwriters Laboratories) and are used in accordance with local and State building and fire codes. Portable space heaters may not be used in rooms where children are sleeping. Portable and fixed space heaters in areas occupied by children shall be separated by fire resistant partitions or barriers to prevent contact with the heater.
- e) Prescription and nonprescription drugs, dangerous household supplies, and dangerous tools shall be kept in a safe place.
- f) Any and all firearms and ammunition shall be locked up at all times and kept in places inaccessible to children. No firearms possessed in violation of a State or federal law or a local government ordinance

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

shall be present in the home at any time. Loaded guns shall not be kept in a foster home unless required by law enforcement officers and in accordance with their law enforcement agency's safety procedures.

- g) The foster home shall comply with all requirements of the state laws and municipal codes for household pets. Certificates of inoculation for rabies shall be available for inspection.
- h) The foster home shall have an operating telephone on the premises unless the supervising agency has approved a written plan detailing the immediate and unrestricted access to such an instrument.
- i) The foster home shall have fire and emergency evacuation plans which are to be discussed and routinely rehearsed with the children.
- j) Adequate closet and dresser space comparable to that provided to the other children of the household shall be provided for each foster child to accommodate personal belongings.
- k) Foster parents shall respect children's rights to privacy while sleeping, toileting and dressing.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Licensing Standards for Group Day Care Homes
- 2) Code Citation: 89 Ill. Adm. Code 408
- 3) Section Numbers: Proposed Action:  
408.85 Amendment
- 4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10/5.2] and the Children's Product Safety Act [430 ILCS 125].
- 5) A Complete Description of the Subjects and Issues Involved: Implements Section 5.2 of the Child Care Act that prohibits any child care facility from having an unsafe children's product, as defined by the Children's Product Safety Act, on their premises on or after July 1, 2000.
- 6) Will these proposed amendments replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any proposed amendments to this Part pending? No

10) Statement of Statewide Policy Objectives: These rules do not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3].

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Susan Howell  
Department of Children and Family Services  
406 East Monroe, Station # 65  
Springfield, Illinois 62701-1498  
Telephone: (217) 524-1983  
TTY: (217) 524-3715  
E-mail: CFPolicy@dcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

12) Initial Regulatory Flexibility Analysis:

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- A) Types of small businesses affected: This rulemaking affects small businesses that are licensed as Group Day Care Homes.
- B) Reporting, bookkeeping or other procedures required for compliance: It is necessary that small businesses identified above have reporting and bookkeeping requirements for identifying receipt of initial and ongoing lists of unsafe children's products.
- C) Types of professional skills necessary for compliance: Adequate reporting skills are required.

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas because: the rulemaking was not anticipated at the time.

The full text of the Proposed Amendments begins on the next page.



## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

PART 408  
LICENSING STANDARDS FOR GROUP DAY CARE HOMES

Section	Purpose
408.1	Definitions
408.5	Effective Date of Standards (Repealed)
408.7	Application For License
408.10	Applications for Renewal of License
408.15	Provisions Pertaining to the License
408.20	Provisions Pertaining to Permits
408.25	General Requirements for Group Day Care Homes
408.30	General Requirements for Group Day Care Home Family
408.35	Background Checks
408.40	Caregiver(s)
408.45	Child Care Assistant(s)
408.50	Substitute(s)
408.55	Admission and Discharge Procedures
408.60	Number and Ages of Children Served
408.65	Health and Medical Care
408.70	Discipline of Children
408.75	Nutrition and Meals
408.80	Program
408.85	Transportation of Children
408.90	Swimming
408.95	Children with Special Needs
408.100	Children Under 30 Months of Age
408.105	School Age Children
408.110	Night Care
408.115	Records and Reports
408.120	Confidentiality of Records and Information
408.125	Cooperation with the Department
408.130	Severability of This Part
408.135	Appendix A: Meal Pattern Chart for Children 0 to 12 Months of Age
APPENDIX B	Meal Pattern Chart for Children Over One Year of Age
APPENDIX C	Minimum Equipment and Supplies - Preschool Programs
APPENDIX D	Minimum Equipment and Supplies - Infant and Toddler Programs
APPENDIX E	Background of Abuse, Neglect, or Criminal History Which May Prevent Licensure or Employment in a Group Day Care Home

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 101], the Children's Product Safety Act [430 ILCS 125], Section 3 of the Abused

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

and Neglected Child Reporting Act [325 ILCS 5/3], and Sections 1 and 2 of the Facilities Requiring Smoke Detectors Act [425 ILCS 10/1 and 2].

SOURCE: Adopted at 13 Ill. Reg. 14828, effective October 1, 1989; emergency amendment at 15 Ill. Reg. 15104, effective October 8, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 8950, effective May 30, 1992; amended at 18 Ill. Reg. 5540, effective April 1, 1994; amended at 19 Ill. Reg. 2784, effective February 23, 1995; amended at 21 Ill. Reg. 4563, effective April 1, 1997; emergency amendment at 24 Ill. Reg. 4212, effective March 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 408.85 Program

- a) The caregiver and parent shall discuss the child's health, development, behavior and activities to ensure consistency in planning for the child.
- b) The program shall include opportunities for a child to have free choice of activities to play alone, if desired, or with one or several chosen peers.
- c) The facility shall provide a basic program of activities geared to the age levels and developmental needs of the child(ren) served. The daily program shall provide:
  - 1) Informal activities, providing a family atmosphere that promotes the physical and emotional well-being of the individual.
  - 2) Encouragement for child(ren) to participate in age appropriate household routines such as preparing food, setting tables, and cleaning up.
  - 3) Regularity of such routines as eating, napping, and toileting with sufficient flexibility to respond to the needs of individual children;
  - 4) A balance of active and quiet activity;
  - 5) Daily indoor and outdoor activities in which child(ren) make use of both large and small muscles;
  - 6) Occasional trips and activities away from the facility (frequency to be determined by the caregiver);
  - 7) A supervised nap period for child(ren) under six years of age who remain five or more hours. This nap period for the group should not normally exceed two and one-half hours. Child(ren) who remain for as long as four consecutive hours shall have a supervised rest period.
- d) The daily program of the facility shall provide experiences which promote the individual child's growth and well-being and the development of self-help and communication skills, social competence, and positive self-identity.
- e) Program planning shall provide the following:

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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- 1) A variety of activities which takes into consideration individual differences in interest, attention span, and physical and intellectual maturity;
- 2) Sufficient time for activities and routines, so that the child(ren) can manage them and progress at their own developmental rate;
- 3) Sufficient materials and equipment to avoid excessive competition and long waiting;
- 4) Program planning so that the child(ren) are not always required to move from one activity to another as a total group;
- 5) A program that avoids long waiting periods between activities and prolonged periods during which the child(ren) must stand or sit;
- 6) Provision for privacy through arranging a small, quiet area that is easily accessible to the child who seeks or needs time to be alone; and
- 7) A variety of chores and activities at the child's developmental level.
- f) Materials and toys shall be kept clean, orderly, attractive, and accessible to the child(ren). The group day care home may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).
- g) There shall be stimulating play and learning materials; these may include household items used creatively.
- h) Each child's individuality shall be respected and a sense of self and development of self esteem shall be encouraged.
- i) Child(ren) shall not be left unattended and adult supervision shall be provided at all times.
- j) The program shall take into account the stress and fatigue that result from constant pressures and stimulation of long hours in a group living situation.
- k) Activity areas, equipment, and materials shall be arranged so that staff can be easily aware of the child(ren)'s presence and activity at all times.
- l) Equipment shall be arranged in orderly, clearly defined areas of interest, with sufficient space in each area for the children to see various activities available to them.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Licensing Standards for Group Homes
- 2) Code Citation: 89 Ill. Adm. Code 403
- 3) Section Numbers: 403.10  
Proposed Action: Amendment
- 4) Statutory Authority: The Child Care Act of 1969 (225 ILCS 10/5.2) and the Children's Product Safety Act (430 ILCS 125).
- 5) A Complete Description of the Subjects and Issues Involved: Implements Section 5.2 of the Child Care Act that prohibits any child care facility from having an unsafe children's product, as defined by the Children's Product Safety Act, on their premises on or after July 1, 2000.

6) Will these proposed amendments replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any proposed amendments to this Part pending? No

10) Statement of Statewide Policy Objectives: These rules do not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3].

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Susan Howell  
Department of Children and Family Services  
406 East Monroe, Station #65  
Springfield, Illinois 62701-1498  
Telephone: (217) 524-1983  
TTY: (217) 524-3715  
E-mail: CFPolicy@dcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

12) Initial Regulatory Flexibility Analysis:

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- A) Types of small businesses affected: This rulemaking affects small businesses that are licensed as group homes.
- B) Reporting, bookkeeping or other procedures required for compliance: It is necessary that small businesses identified above have reporting and bookkeeping requirements for identifying receipt of initial and ongoing lists of unsafe children's products.
- C) Types of professional skills necessary for compliance: Adequate reporting skills are required.

- 13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas because: the rulemaking was not anticipated at the time.

The full text of the Proposed Amendments begins on the next page.

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- TITLE 89: SOCIAL SERVICES  
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

## PART 403

## LICENSING STANDARDS FOR GROUP HOMES

Section	Purpose
403.1	Definitions
403.2	Effective Date of Standards (Repealed)
403.4	Application for License
403.5	Application for Renewal of License
403.6	Provisions Pertaining to the License
403.7	Provisions Pertaining to Permits
403.8	Child Care Services
403.9	Discipline of Children
403.10	Health and Safety
403.11	Education
403.12	Religion
403.13	Recreation and Leisure Time
403.14	Food and Nutrition
403.15	Background Checks
403.16	Professional Services
403.17	Agency Supervision of the Group Home
403.18	Child Care Staff
403.19	Professional Staff
403.20	Support Staff
403.21	Staff Coverage
403.22	Health Requirements for Staff and Volunteers
403.23	Live-In Staff (Repealed)
403.24	Night Duty Staff (Repealed)
403.25	Staff Training
403.26	Physical Facilities
403.27	Required Written Consents
403.28	Records and Reports
403.29	Severability of This Part

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10] and the Children's Product Safety Act [430 ILCS 125].

SOURCE: Adopted and codified at 5 Ill. Reg. 13147, effective November 30, 1981; amended at 7 Ill. Reg. 3454, effective April 4, 1983; amended at 11 Ill. Reg. 1489, effective January 15, 1987; amended at 11 Ill. Reg. 1753, effective October 15, 1987; amended at 21 Ill. Reg. 4587, effective April 1, 1997; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.



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## NOTICE OF PROPOSED AMENDMENTS

**Section 403.10 Health and Safety**

- a) Each child shall be examined by a physician within 30 days before placement in a group home unless the placement is an emergency. In an emergency placement the physical examination shall be scheduled within 5 days after placement and completed within 15 days after placement. In all cases each child shall be screened for communicable diseases within 72 hours.
- b) Each child shall be examined annually or more frequently if findings and medical opinion indicate need. Diagnosed medical problems shall be treated promptly.
- c) Each child shall be given a dental examination at least annually. Diagnosed dental defects shall be treated promptly.
- d) Immunizations and tests, unless exempt on religious grounds, shall be administered as required by the Illinois Department of Public Health regulations or as recommended by a physician.
- e) In case of sickness or accident, immediate medical care shall be secured for the child in accordance with the supervising child welfare agency's directions.
- f) Any child who is ill or suspected of having a contagious disease should be separated from other children until a medical determination has been received that the disease is not contagious or is no longer contagious.
- g) The group home shall keep the supervising child welfare agency informed of any of the child's health problems including the problems of alcoholism and drug abuse.
- h) The group home shall conduct and record fire and evacuation training at least once every three months and consult with local fire authorities regarding fire safety practices.
- i) Household pets shall be inoculated as required by state and local regulations.
- j) No firearms or ammunition shall be allowed in the group home.
- k) The group home may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Licensing Standards for Youth Emergency Shelters
- 2) Code Citation: 89 Ill. Adm. Code 410
- 3) Section Numbers: Proposed Action:  
410.190 Amendment
- 4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10/5.2] and the Children's Product Safety Act [430 ILCS 125].
- 5) A Complete Description of the Subjects and Issues Involved: Implements Section 5.2 of the Child Care Act that prohibits any child care facility from having an unsafe children's product, as defined by the Children's Product Safety Act, on their premises on or after July 1, 2000.
- 6) Will these proposed amendment replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendment contain incorporations by reference? No
- 9) Are there any proposed amendments to this Part pending? No
- 10) Statement of Statewide Policy Objectives: These rules do not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3].
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:  
  
Susan Howell  
Department of Children and Family Services  
406 East Monroe, Station # 65  
Springfield, Illinois 62701-1498  
(217) 524-1983  
TTY: (217) 524-3715  
E-mail: CFPolicy@dcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

12) Initial Regulatory Flexibility Analysis:

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

- A) Types of small businesses affected: This rulemaking affects small businesses that are licensed as Youth Emergency Shelters.
- B) Reporting, bookkeeping or other procedures required for compliance: It is necessary that small businesses identified above have reporting and bookkeeping requirements for identifying receipt of initial and ongoing lists of unsafe children's products.
- C) Types of professional skills necessary for compliance: Adequate reporting skills are required.

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas because: the rulemaking was not anticipated at the time.

The full text of the Proposed Amendment begins on the next page.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
SUBCHAPTER c: REQUIREMENTS FOR LICENSURE

PART 410

LICENSING STANDARDS FOR YOUTH EMERGENCY SHELTERS

Section	Purpose
410.10	Definitions
410.20	Effective Date of Standards (Repealed)
410.30	Application for License
410.40	Application for Renewal
410.50	Provisions Pertaining to the License
410.60	Provisions Pertaining to Permits
410.70	Supervision of the Emergency Shelter
410.80	Finances
410.90	Homeless Youth Staff
410.100	Professional Staff Requirements
410.110	Support Staff
410.120	Volunteers
410.130	Background Checks
410.140	Health Requirements for Staff and Volunteers
410.150	Staff Training
410.160	Live-in Staff
410.170	Staff Coverage
410.180	Physical Facilities
410.190	Facility Capacity
410.200	Notification and Consent of Parent or Legal Guardian
410.210	Notification of Crisis Intervention Agency
410.220	Notification of Child Abuse Hotline
410.230	Reporting to the Child Abuse Hotline
410.240	Admission Criteria
410.250	Shelter Care Services
410.260	Length of Stay
410.270	Discipline and Control of Residents
410.280	Food and Nutrition
410.290	Transportation of Youth
410.300	Care Management Services
410.310	Medical and Health Services
410.320	Education
410.330	Religion
410.340	Required Written Consents for Minors
410.350	Records and Reports
410.360	Records Retention
410.370	Termination of Shelter Care Services
410.380	Severability of This Part

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10] and the Children's Product Safety Act [430 ILCS 125].

SOURCE: Emergency Rules adopted at 14 Ill. Reg. 999, effective January 1, 1990, for a maximum of 150 days; adopted at 14 Ill. Reg. 9407, effective May 31, 1990; amended at 21 Ill. Reg. 4596, effective April 1, 1997; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 410.190 Physical Facilities

- a) Buildings, or parts of buildings, acquired or converted for use as an emergency shelter shall be safe, clean, well-ventilated, properly lighted and heated.
- b) If well water is used, a copy of the inspection report and compliance with local or State health department regulations shall be on file.
- c) Fire prevention and health standards complying with State laws and municipal codes shall be maintained.
- d) The emergency shelter shall have written emergency plans in the event of fire or natural disaster. The plans shall be posted in an area accessible to residents and shall be reviewed with residents upon their first admission.
- e) The youth emergency shelter may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).
- f) Dangerous household supplies and dangerous tools shall be kept in safe, locked places. Unlawful controlled substances, firearms, ammunition, and other weapons shall not be permitted in an emergency shelter.
- g) There shall be provisions for separating a resident who is suspected of having a contagious disease from other residents pending medical determination.
- h) The emergency shelter shall have an operating telephone on the premises.
- i) Each resident shall be provided with a separate bed except that parents may share a double bed with their child over the age of 2. Each bed shall have a mattress and comfortable bedding. The bedding shall be changed for each new resident assigned to a bed. If a resident will be staying in the shelter for more than seven days, linens shall be changed at least weekly.
- j) Residents shall not share a sleeping area or a sleeping room with residents of the opposite sex except parents may share rooms with their children.
- k) Sleeping areas or sleeping rooms shall be furnished according to the ages and special needs of the residents. There shall be a minimum of

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

† 35† square feet of floor space per resident, excluding the closet and wardrobe area.

l)† Basements and attics may be used for sleeping for youth who are mobile, physically and mentally capable of self preservation, and able to understand and follow directions with minimal assistance in an emergency.

1) To be used for sleeping, basements and attics shall have two exits with one exit leading directly to the outside with means to safely reach the ground level. The second exit may be an easily accessible outside window which provides an unobstructed opening, operable from the inside without the use of tools, and large enough to accommodate an adult. The sleeping area shall be separated from the furnace and utility areas.

2) No basement or attic shall be used for sleeping without the written approval of fire, health, and safety officials.

m)† The sleeping areas shall be exposed to an operable outside window or shall have some alternate permanent means of ventilation.

n)† There shall be a bathroom unit including a lavatory and toilet for every ten youth. Bathroom use shall be separate for males and females except for parents with their children.

o)† Shower and laundry facilities for the residents shall be provided in one of two ways:

1) through written agreements approved by the Department with services such as drop-in centers that provide shower and/or laundry facilities for the residents; or

2) through the provision of one shower facility for every 10 residents and laundry services on site at the emergency shelter. p)† Shower use shall be separate for males and females except for parents and their children.

q)† Kitchen and dining facilities shall be maintained in a clean and sanitary condition in accordance with the requirements of State (Food Service Sanitation; 77 Ill. Adm. Code 750) and local public health authorities.

r)† Space and equipment shall be provided for indoor and outdoor recreation. Recreational resources in nearby communities may be used to fulfill this requirement.

s)† There shall be office facilities and equipment for the conduct of the shelter's professional services and business affairs. The office facilities do not need to be at the same location as the shelter facility but they must be located within reasonable daytime access to the residents.

t)† There shall be space designated in the facility for private interviews or conferences with residents.

u)† Healthy household pets owned by live-in staff which present no danger to residents are permitted on the premises unless prohibited by local health regulations. A licensed veterinarian shall certify that the



DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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animals are free of diseases that could endanger the resident's health and that dogs and cats have been inoculated for rabies.  
y) Licensed foster homes sheltering homeless youth shall be regulated by the rules contained in 89 Ill. Adm. Code 402, Licensing Standards for Foster Family Homes, and shall provide the case management, notification and referral services required by this Part either directly or through the administration over the licensed foster home.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Certification of Alternative Retail Suppliers

2) Code Citation: 83 Ill. Adm. Code 451

3) Section Numbers:

451.10	Amendment	<u>Proposed Action:</u>
451.20	Amendment	
451.30	Amendment	
451.40	Amendment	
451.50	New Section	
451.60	New Section	
451.100	Amendment	
451.110	Amendment	
451.120	Amendment	
451.130	Amendment	
451.140	Amendment	
451.150	Amendment	
451.160	Repeal	
451.220	Amendment	
451.230	Amendment	
451.250	Amendment	
451.260	Amendment	
451.270	Repeal	
451.320	Amendment	
451.350	Amendment	
451.360	Amendment	
451.370	Repeal	
451.430	Amendment	
451.440	Amendment	
451.450	Repeal	
451.500	Amendment	
451.510	Amendment	
451.700	New Section	
451.710	New Section	
451.720	New Section	
451.730	New Section	
451.740	New Section	
451.750	New Section	
451.760	New Section	
451.770	New Section	

4) Statutory Authority: Implementing and authorized by Section 16-115 of the Public Utilities Act (220 ILCS 5/16-115).

5) A Complete Description of the Subjects and Issues Involved: Section 16-115

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF PROPOSED AMENDMENTS

of the Act requires an alternative retail electric supplier ("ARES") to obtain a certificate from the Commission before serving any retail customer or other user located in Illinois. Section 16-115(f) gives the Commission authority to promulgate rules applicable to ARES certification. Rules applicable to ARES certification have been adopted in 83 Ill. Adm. Code 451.

The Commission has gained experience in assessing ARES applications since the adoption of the rules. This experience has revealed that, notwithstanding the best efforts of the parties to the original rulemaking, some of the financial standards in Subparts C and D need revision to ensure that applicants possess the necessary financial resources to offer retail electric service. The objectives are to clarify existing financial criteria; simplify some of the criteria and make them more understandable; and expand the number of "streamlined" criteria to encompass additional types of financial resources that came to light in the course of reviewing ARES applications. Bonding requirements have been consolidated. A financial ratio test has been added.

The Commission has proposed a requirement that the applicant must disclose the term (length) of any contract where an agent or contractor is used to satisfy any of the managerial or technical qualifications.

Subpart H is being proposed to add reporting requirements that will allow the Commission to monitor ARES on a continuing basis.

6) Will these proposed amendments replace emergency amendments currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? Yes

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: These proposed amendments neither create nor expand any state mandate on units of local government, school districts, or community college districts.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

Comments should be filed with:

Donna M. Caton  
Chief Clerk

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## ILLINOIS COMMERCE COMMISSION

## NOTICE OF PROPOSED AMENDMENTS

Illinois Commerce Commission  
527 East Capitol Avenue  
P.O. Box 19280  
Springfield, IL 62794-9280  
217/782-7434

Comments should be filed with the Chief Clerk within 45 days after the date of this issue of the *Illinois Register*.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: These proposed amendments will affect any subject alternative retail electric supplier that is also a small business as defined in the Illinois Administrative Procedure Act.

B) Reporting, bookkeeping or other procedures required for compliance: Filing procedures

C) Types of professional skills necessary for compliance: Managerial skills

13) Regulatory Agenda on which this rulemaking was summarized: January 2000

The full text of the Proposed Amendments begins on the next page:

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## ILLINOIS COMMERCE COMMISSION

## NOTICE OF PROPOSED AMENDMENTS

TITLE 83: PUBLIC UTILITIES  
 CHAPTER I: ILLINOIS COMMERCE COMMISSION  
 SUBCHAPTER C: ELECTRIC UTILITIES

## PART 451

## CERTIFICATION OF ALTERNATIVE RETAIL ELECTRIC SUPPLIERS

## SUBPART A: GENERAL PROVISIONS

Section  
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AUTHORITY: Implementing and authorized by Section 16-115 of the Public Utilities Act [220 ILCS 5/16-115].

SOURCE: Adopted at 23 Ill. Reg. 5528, effective May 1, 1999; amended at 23

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Ill. Reg. 13820, effective December 1, 1999; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: GENERAL PROVISIONS

Section 451.10 Definitions

"Accountant's report" has the same meaning as in 17 CFR 210.1-02 and 210.3-02 as of April 1, 1999. No incorporation of the Code of Federal Regulations in this Section 451.10 includes any later amendment or edition.

"Act" means the Public Utilities Act [220 ILCS 5].

"Alternative retail electric supplier" or "ARES" has the same meaning means the same as the term is defined in Section 16-102 of the Act [220 ILCS 5/16-102].

"Applicant" means an entity that files an application with the Illinois Commerce Commission to provide electric service as an alternative retail electric supplier under Section 16-115 of the Act [220 ILCS 5/16-115].

"Business enterprise" means a commercial enterprise or establishment.

"Certified", when used in regard to financial statements, has the same meaning as in 17 CFR 210.1-02 as of April 1, 1999. No incorporation of the Code of Federal Regulations in this Section 451.10 includes any later amendment or edition.

"Commission" means the Illinois Commerce Commission.

"Electric cooperative" means the same as that term is defined in Section 3.4 of the Electric Supplier Act [220 ILCS 30/3.4].

"Financial statements" has the same meaning as in 17 CFR 210.3-01 to 210.3-05 as of April 1, 1999. No incorporation of the Code of Federal Regulations in this Section 451.10 includes any later amendment or edition.

"Funds from operations interest coverage" equals (cash flow from operations exclusive of changes in working capital plus gross interest expense) divided by gross interest incurred before subtraction of capitalized interest and interest income.

"Funds from operation to average total debt" equals (cash flow from

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operations exclusive of changes in working capital plus depreciation adjustment for operating leases) divided by the average balance of total debt.

"Letter of credit" means an instrument issued by a bank guaranteeing the payment of a customer's (i.e., the applicant or ARES) drafts in favor of a third party up to a stated amount for a specified period.

"License bond" means an obligation of a surety to pay the monies that the licensee owes the State of Illinois for violations of the duties and obligations imposed on it as an ARES.

"Management position" means an employed position whereby an individual is responsible for directing, supervising, or administering the activities of a group of two or more people with fiscal responsibility and authority over that group.

"Material" has the same meaning as in 17 CFR 210.1-02 as of April 1, 1999. No incorporation of the Code of Federal Regulations in this Section 451.10 includes any later amendment or edition.

"Municipal system" means any public utility owned and operated by any political subdivision or municipal corporation of the State of Illinois, or owned by such an entity and operated by any lessee or agent thereof.

"Payment bond" means an obligation of a surety to pay the monies that the principal (i.e., the applicant or ARES) owes another party in the event that the applicant fails for whatever reason to perform its contract(s).

"Permit bond" has the same meaning as "license bond".

"Pre-tax interest coverage" equals earnings from continuing operations before interest and taxes divided by gross interest incurred before subtraction of capitalized interest and interest income.

"Ratings agency" means Standard & Poor's or its successor, Moody's Investors Service or its successor, Duff & Phelps or its successor, or Fitch IBCA or its successor.

"Retail customer", as used in this Part, means the same as the term is defined in Section 16-102 of the Act.

"Small commercial retail customer" means the same as the term is defined in Section 16-102 of the Act.



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"Technical staff" means a staff of trained technical experts in electric power and energy supply, including persons who have completed an accredited or otherwise recognized apprenticeship program or a formal education program and persons who possess no less than four years of experience working in a similar position with a utility, ARES or related business. This shall also include those persons registered as professional engineers as required by the Professional Engineering Practice Act of 1989 [225 ILCS 325].

"Total debt" equals notes payable plus current portion of long-term debt, preferred stock and capitalized lease obligations plus long-term debt plus capitalized lease obligations plus total off balance sheet debt.

"Total debt to total capitalization" equals total debt divided by (total debt plus minority interest, total preferred and preference stock plus common equity).

"Unconditional guarantee" means an undertaking by a guarantor to pay or fulfill the obligation upon failure of the principal obligor to fulfill its contractual obligations. An unconditional guarantee shall contain the following provisions:

The guarantor is one of payment and not of collection;

The guarantor's obligations under the guarantee are weighed equally with other guarantees;

The obligations from transactions entered into under the original guarantee must be the subject of an ongoing guarantee;

The guarantee reinstates if any guaranteed payment made by the primary obligor is recaptured as a result of bankruptcy or insolvency;

The guarantee is binding on successors of the guarantor;

The guarantor has subjected itself to jurisdiction and service of process in accordance with the laws of the State of Illinois, and the guarantee will be construed in accordance with the laws of the State of Illinois without reference to conflict of laws principles; and

The guaranteed obligations are unconditional, irrespective of value, genuineness, validity, waiver, release, alteration, amendment, and enforceability of the guaranteed obligations.

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(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 451.20 Requirements for All Applicants under Section 16-115(d) of the Act

Each applicant, except electric cooperatives or municipal systems making an election under Section 17-300 of the Act [220 ILCS 5/17-300] to become an ARES and applicants filing under Section 16-115(e) of the Act [220 ILCS 5/16-115(e)], for certification as an ARES must include with its application the following items, as required by Section 16-115(d) of the Act:

- The applicant shall certify that it will comply with all applicable Federal, State, regional and industry rules, policies, practices, procedures and tariffs for the use, operation, maintenance, safety, integrity, and reliability of the interconnected electric transmission system (including the Open Access Same-time Information System (OASIS)) mandated by 18 CFR 37 and the rules and operating guidelines and procedures of the regional or national electric reliability council(s) or organization(s) and their successors for any portion of the state in which the applicant is certified to provide retail electric service) and shall agree to submit good faith schedules of transmission and energy in accordance with applicable tariffs.
- The applicant shall certify that it will provide service only to retail customers that are eligible to take delivery services.
- The applicant shall certify that it will comply with informational and reporting requirements that the Commission may by rule establish.
- The applicant shall certify that it will comply with informational and reporting requirements that the Commission may establish regarding the provision of information required by Section 16-112 of the Act [220 ILCS 5/16-112]. Any data related to contracts for the purchase and sale of electric power and energy shall be made available for review by the Staff of the Commission on a confidential and proprietary basis and only to the extent and for the purposes that the Commission determines are reasonably necessary in order to carry out the purposes of this Act.
- The applicant shall certify that it complies with the requirements of Section 16-115(d)(5) and that it will remain in compliance with such requirements--and will--annually--certify--such compliance--to--the Commission--within--30--days--after--the--anniversary--date--of--its certification. The applicant shall provide the following:
  - Applicant's name and street address.
  - Applicant's Federal Employer Identification Number (FEIN).
  - Names and addresses of all of the applicant's affiliated companies involved in electric retail sales or purchases in the North American Continent.
- The applicant shall demonstrate that:

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- 1) The applicant is licensed to do business in the State of Illinois; and
- 2) The employees of the applicant that will be installing, operating, and maintaining generation, transmission, or distribution facilities within the State of Illinois, or any entity with which the applicant has contracted to perform those functions within the State of Illinois, have the requisite knowledge, skills, and competence to perform those functions in a safe and responsible manner in order to provide safe and reliable service in accordance with the criteria stated in Section 16-128(a) of the Act [20 ILCS 5/16-128(a)].
- g) The applicant shall certify compliance with all other applicable laws and regulations and Commission rules and orders.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.30 Required Filings and Procedures**

- a) The applicant shall publish notice of its application for certification in the Official State Newspaper within 10 days following the filing of the application for certification. The applicant shall ~~will~~ file proof of publication with the Clerk of the Commission ~~when notice-publication-has-been-accomplished~~.
- b) All applications for certification under this part shall be verified as required by Section 200.130 of the Commission's "Rules of Practice" (83 Ill. Adm. Code 200.130).
- c) The applicant shall identify the geographic area or geographic areas in which the applicant seeks to be authorized to offer service and the types of services it intends to offer. The applicant shall provide the following:
  - 1) Description of the Applicant's business.
  - 2) Description of the characteristics of customer group(s) applicant proposes to serve.
  - 3) Proof that notification of an intent to serve in any utility's service area has been previously provided to the agent designated by the electric utility pursuant to 83 Ill. Adm. Code 215.10 of each electric utility in whose service area the applicant intends to serve.

- d) Itemized filing requirements
  - 1) At the time an ARES files an application for certification under this part, the applicant shall also file its statement in support of application, supporting documents, and schedules containing information showing that the applicant meets the requirements of Section 16-115 of the Act [20 ILCS 5/16-115].
  - 2) The applicant shall certify compliance with all terms and

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conditions required by Sections 16-115A(a), (b) and (f), 16-119, 16-123, 16-125(b) and (c), 16-127, and 16-128(a) of the Act, to the extent those Sections have application to the services being offered by the alternative electric supplier [220 ILCS 5/16-115A(a), (b) and (f), 16-119, 16-123, 16-125(b) and (c), 16-127, and 16-128(a)].

- e) Contents of documents shall be consistent with Subpart B of the Commission's "Rules of Practice" (83 Ill. Adm. Code 200: Subpart B).
- f) The foregoing requirements of this Section shall apply to neither electric cooperatives or municipal systems making an election under Section 17-300 of the Act to become an ARES nor to applicants filing under Section 16-115(e) of the Act.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.40 Customer Records and Information**

- a) The applicant shall agree to adopt and follow rules and procedures ensuring that authorizations received from customers, customer billing records, and requests for delivery service transmitted to utilities are retained for a period of not less than two calendar years after the calendar year in which they were created. In addition to other lawful means of discovery, these records shall be made available by request to the Commission or its Staff on a confidential and proprietary basis, as necessary to carry out the Commission's obligations under the Act.
- b) The applicant shall agree to adopt and follow rules and procedures to preserve the confidentiality of its customer's data.
- c) The foregoing requirements of this Section shall apply to neither electric cooperatives ~~nor~~ or municipal systems making an election under Section 17-300 of the Act to become an ARES nor to applicants filing under Section 16-115(e) of the Act.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.50 License or Permit Bond Requirements**

- a) The applicant shall execute and maintain a license or permit bond issued by a surety or insurance company authorized to transact business in the State of Illinois in favor of the People of the State of Illinois. The amount of the bond shall equal \$30,000 if the applicant seeks to serve only nonresidential retail customers with maximum electrical demands of one megawatt or more, \$150,000 if the applicant seeks to serve nonresidential retail customers with annual

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electrical consumption greater than 15,000 kWh, or \$300,000 if the applicant seeks to serve all eligible retail customers. The bond shall be conditioned upon the full and faithful performance of all duties and obligations of the applicant as an ARES and shall be valid for a period of not less than one year. The cost of the bond shall be paid by the applicant. The applicant shall file this bond as part of its application for certification.

- b) In the event that a license or permit bond is cancelled, expires or is drawn upon, the ARES shall execute and maintain an additional or replacement bond such that the cumulative value of all outstanding bonds never falls below the amount required in subsection (a) of this Section. The ARES shall file a copy of the additional or replacement bond with the Chief Clerk of the Commission and provide a copy to the Manager of the Financial Analysis Division or his or her successor at least 15 days in advance of the effective date of the bond. The filing shall include a cover letter that explains the purpose of the filing and shall be identified by the name of the ARES as it appears in the most recent Commission order granting the ARES certification.

- c) In the event that a license or permit bond is modified, the ARES shall file a copy of the modified bond with the Chief Clerk of the Commission and provide a copy of that bond to the Manager of the Financial Analysis Division or his or her successor at least 15 days in advance of the effective date of the modification. The filing shall include a cover letter that explains the purpose of the filing and shall be identified by the name of the ARES as it appears in the most recent Commission order granting the ARES certification.

- d) The requirements of this Section shall apply to neither electric cooperatives nor municipal systems making an election under Section 17-300 of the Act to become an ARES nor to applicants filing under Section 16-115(e) of the Act.

(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 451.60 Confidential Documentation

If an applicant or ARES believes any of the information to be disclosed by an applicant or ARES is privileged or confidential, the applicant or ARES should request that the Commission enter an order to protect the confidential, proprietary or trade secret nature of any data, information or studies pursuant to 83 Ill. Adm. Code 200.430 or Section 5-109 of the Act. The applicant or ARES shall designate which information is privileged and confidential. Such information shall be marked as "confidential" and submitted separately under seal to the Chief Clerk of the Commission. The applicant or ARES is required to explain why that information is confidential. The applicant or ARES is required to document pursuant to Section 451.30(d)(1).

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(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART B: EXPEDITED PROCEDURES FOR APPLICANTS SEEKING WHG-SBRR TO SERVE ONLY NONRESIDENTIAL CUSTOMERS WITH MAXIMUM ELECTRICAL DEMANDS OF ONE MEGAWATT OR MORE

## Section 451.100 Applicability of Subpart B

This Subpart shall apply only to the expedited certification of all alternative retail electric suppliers that seek to serve only nonresidential retail customers with maximum electrical demands of one megawatt or more as required by Section 16-115(f) of the Act (220 ILCS 5/16-115(f)) except as noted. The requirements of this Subpart are in addition to the requirements of Subpart A. This Subpart applies to neither electric cooperatives nor electric municipal systems making an election under Section 17-300 of the Act to become an alternative retail electric supplier nor to applicants filing under Section 16-115(e) of the Act seeking expedited certification to serve only nonresidential retail customers with maximum electrical demands of one megawatt or more.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 451.110 Financial Qualifications under Subpart B

- a) The applicant shall execute and maintain a bond issued by a surety company authorized to transact business in the State of Illinois in the amount of \$30,000 in favor of the People of the State of Illinois in the amount of \$30,000. The bond shall be conditioned upon the full and faithful performance of all duties and obligations of the applicant as an ARES. The cost of the bond shall be paid by the applicant. The applicant shall provide a copy of this bond as part of its application for certification.

- a) An applicant seeking to provide electric power and energy that it generates with property, plant, and equipment that it owns or controls or operates shall be deemed to possess sufficient financial capabilities to serve nonresidential retail customers with maximum electrical demand of one megawatt or more if in addition to meeting the requirement described in subsection (a) the applicant meets any of the following criteria:

- 1) The applicant maintains at least one of the following commercial paper ratings: A3-2 or higher from Moody's Investors Service or its successor, P3-2 or higher from Moody's Investors Service or its successor, D3-2 or higher from Duff & Phelps or its successor, or F3-2 or higher from Fitch IBCA or its successor; or at least one of the following long-term credit bond ratings: BBB- or higher



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from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, BBB- or higher from Duff & Phelps or its successor, or BBB- or higher from Fitch IBCA or its successor. The applicant shall provide with its application a copy of the ratings agency reports that present the these ratings of the applicant.

- 2) The applicant maintains has a borrowing agreement with an affiliate that has at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, D-2 or higher from Duff & Phelps or its successor, or F-2 or higher from Fitch IBCA or its successor; or at least one of the following long-term credit bond ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, BBB- or higher from Duff & Phelps or its successor, or Baa- or higher from Fitch IBCA or its successor. The amount of credit available to the applicant under the borrowing agreement shall be no less than the greater of \$500,000 or 5% of the amount of the applicant's revenue for its most recently completed fiscal year. That amount of revenue must appear in the applicant's certified financial statements that have received an accountant's report that certifies those financial statements to be free of material misstatement. The borrowing agreement shall be valid for a period of not less than one year. The applicant shall provide a copy of the following:

- A) The ratings agency reports that present the ratings of the affiliate with which the applicant maintains the borrowing agreement; and
- B) The borrowing agreement;
- C) The applicant's certified financial statements; and
- D) The accountant's report for the applicant's certified financial statements.

- 3) The obligations of the applicant arising from the acquisition of electric energy, and the fuel required to produce electric energy, for sale or lease or in exchange for other value received, or from the delivery or furnishing of electric power or energy to one or more retail customers, are covered under an unconditional guarantee, payment bond, or letter of credit in an amount that is no less than the greater of \$500,000 or 5% of the amount of the applicant's revenue from the sale of electric energy for the most recently completed fiscal year. That amount of revenue must appear in the applicant's certified financial statements that have received an accountant's report that certifies those financial statements to be free of material misstatement. The unconditional guarantee, payment bond, or letter of credit shall be valid for a period of not less than one

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year, have been unconditionally guaranteed by an affiliate of the applicant that maintains at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, D-2 or higher from Duff & Phelps or its successor, or F-2 or higher from Fitch IBCA or its successor; or at least one of the following long-term bond ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, BBB- or higher from Duff & Phelps or its successor, or BBB- or higher from Fitch IBCA or its successor. The applicant shall provide a copy of the following:

- A) The ratings reports that present the ratings of the affiliate; and
- B) The guarantee;
- A) The unconditional Guarantee. The guarantor shall be an affiliate of the applicant that maintains at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, D-2 or higher from Duff & Phelps or its successor, or F-2 or higher from Fitch IBCA or its successor; or at least one of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, BBB- or higher from Duff & Phelps or its successor, or BBB- or higher from Fitch IBCA or its successor. The applicant shall provide a copy of the following:

- i) The ratings agency reports that present the ratings of the affiliate that is the guarantor;
- ii) The unconditional guarantee;
- iii) The certified financial statements of the applicant; and
- iv) The accountant's report for the certified financial statements of the applicant.
- B) Payment Bond. The payment bond or payment bonds shall be issued by a surety authorized to transact business in the State of Illinois. The applicant shall provide a copy of the following:
- i) The payment bonds;
- ii) The authorization for the surety to transact business in the State of Illinois;
- iii) The certified financial statements of the applicant; and
- iv) The accountant's report for the certified financial statements of the applicant.
- C) Letter of Credit. The letter of credit shall be irrevocable



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and issued by a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, A- or higher from Duff & Phelps or its successor, or A- or higher from Fitch IBCA or its successor. The applicant shall provide a copy of the following:

- i) The letter of credit;
- ii) The ratings agency report that presents the long-term obligation rating of the financial institution extending the credit;
- iii) The certified financial statements of the applicant; and
- iv) The accountant's report for the certified financial statements of the applicant.

D) This option is only available to an applicant that will engage in activities that could result in the applicant holding an ownership interest in or taking title to electric energy for the purpose of sale or resale to Illinois retail customers.

4) The applicant certifies that it will offer to reimburse its Illinois retail customers for the additional costs those customers incur to acquire electric energy as a result of the applicant's failure to comply with a contractual obligation to supply such energy. The applicant's prospective obligation to reimburse Illinois retail customers shall be covered by an unconditional guarantee, payment bond, or letter of credit in an amount equal to the product of 1080 times an estimate of the maximum number of megawatts the applicant expects to schedule over the next twelve months times the average of the 45 highest daily market prices of electric energy traded during the previous year. Each January, the Commission shall choose a published price index for electricity for use in this subsection (a)(4). The daily market price of electric energy shall equal the published price index for electricity traded in Illinois, except in the event that no price index for electricity traded in the State of Illinois is published, then the daily market price of electricity shall be determined by the use of a published price index for electricity traded at the nearest location to the State of Illinois. The unconditional guarantee, payment bond, or letter of credit shall be valid for a period of not less than one year.

A) Unconditional Guarantee. The guarantor shall be an affiliate of the applicant that maintains at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, D-2 or higher from Duff & Phelps or its successor, or F-2 or higher from

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Fitch IBCA or its successor; or at least one of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, BBB- or higher from Duff & Phelps or its successor, or BBB- or higher from Fitch IBCA or its successor. The applicant shall provide a copy of the following:

- i) The ratings agency reports that present the ratings of the affiliate that is the guarantor;
- ii) The unconditional guarantee; and
- iii) A good faith estimate of the peak amount of MW the applicant will schedule during the remainder of the current calendar year.

B) Payment Bond. The payment bond or payment bonds shall be issued by a surety authorized to transact business in the State of Illinois. The applicant shall provide a copy of the following:

- i) The payment bonds;
- ii) The authorization for the surety to transact business in the State of Illinois; and
- iii) A good faith estimate of the peak amount of MW the applicant will schedule during the remainder of the current calendar year.

C) Letter of Credit. The letter of credit shall be irrevocable and issued by a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, A- or higher from Duff & Phelps or its successor, or A- or higher from Fitch IBCA or its successor. The applicant shall provide a copy of the following:

- i) The letter of credit;
- ii) The ratings agency report that presents the long-term obligation rating of the financial institution extending the credit; and
- iii) A good faith estimate of the peak amount of MW the applicant will schedule during the remainder of the current calendar year.

5) The applicant maintains a A-line of credit or revolving credit agreement from a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, A- or higher from Duff & Phelps or its successor, or A- or higher from Fitch IBCA or its successor, in an amount equal to the greater of: A) The amount of the line of credit or revolving credit agreement shall be no less than the greater of \$500,000 or 5% lesser of at least five percent of the amount of

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revenue for the most recently completed fiscal year. ~~last 12-month period or at least two percent of the amount of gross plant~~ That amount of revenue must appear in shown on the applicant's certified ~~last~~ financial statements that have received an accountant's report ~~as defined in 17-CFR-210.2-02~~ 210-2-01 and 210-2-02 ~~as of April 17, 1998~~, that certifies those financial statements to be free of material misstatement. The line of credit or revolving credit agreement shall be valid for a period of not less than one year. The applicant shall provide a copy of the following:

A4) The line of credit or revolving credit agreement;  
B4) The Standard--& Poor's, Moody's Investment Service, Buff- & Pheps or Fitch-I&EA ratings agency report that presents the long-term obligation debt security rating of the financial institution extending the credit;

C44) The applicant's ~~its~~ certified financial statements ~~as defined in 17-CFR-210.2-02 and 210-3-01 to 210-3-05 as of April 17, 1998~~; and

D4) The accountant's report for the applicant's financial statements ~~as defined in 17-CFR-210.1-02 and 210-2-02 as of April 17, 1998~~; or

B) At least two percent of the estimated cost to place the plant, property, and equipment in service with which the applicant intends to provide electric power and energy; the applicant shall provide a copy of the following:

i) The estimated cost to place the plant, property and equipment in service; and  
ii) A document showing the cost of other generating facilities similar in nature and size to the plant, property, and equipment with which the applicant intends to provide electric power and energy; and  
iii) A copy of all agreements to provide a line of credit or revolving credit to the applicant.

6) The applicant earns 12 points on the financial ratios set forth in subsection (6)(A):

A) Financial Ratios  
i) Pre-Tax Interest Coverage (rounded to the nearest 0.1)

4.0 or above: 5 points  
3.5 to 3.9: 4 points  
3.0 to 3.4: 3 points  
2.5 to 2.9: 2 points  
2.0 to 2.4: 1 point  
1.9 or below: 0 points

ii) Funds from Operations Interest Coverage (rounded to

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the nearest 0.1)

4.5 or above: 5 points  
4.0 to 4.4: 4 points  
3.5 to 3.9: 3 points  
3.0 to 3.4: 2 points  
2.5 to 2.9: 1 point  
2.4 or below: 0 points

iii) Funds from Operations to Total Debt (rounded to the nearest 1%)

31% or above: 5 points  
26% to 30%: 4 points  
21% to 25%: 3 points  
16% to 20%: 2 points  
11% to 15%: 1 point  
10% or below: 0 points

iv) Total Debt to Total Capital (rounded to the nearest 1%)

57% or below: 5 points  
58% to 60%: 4 points  
61% to 63%: 3 points  
64% to 66%: 2 points  
67% to 69%: 1 point  
70% or above: 0 points

B) The applicant shall provide the following:

i) The applicant's certified financial statements for its most recently completed fiscal year;

ii) The accountant's report for the applicant's certified financial statements; and

iii) A schedule showing the calculation of each financial ratio with a reference to the applicant's certified financial statements provided for each input of the calculation.

b) An applicant that will provide electric power and energy with property, plant, and equipment that it owns, controls, or operates shall have in force, and provide proof that it has in force, general liability insurance coverage in the amount of at least \$100,000,000.

c) An applicant that seeks to provide electric power and energy with property, plant, and equipment that it does not own, control, or operate shall be deemed to possess sufficient financial resources to be certified as an ARS to serve only nonresidential retail customers

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with--maximum--electrical--demands--of--one--megawatt--or--more--if,--in addition--to--meeting--the--requirement--in--subsection--(a)--it--meets--any--of the--following--criteria:

- 1) The--criterion--described--in--subsection--(b)(1)--of--this--Section--
- 2) The--criterion--described--in--subsection--(b)(2)--of--this--Section--
- 3) The--criterion--described--in--subsection--(b)(3)--of--this--Section--
- 4) A--line--of--credit--or--revolving--credit--agreement--from--a--financial institution--with--a--long--term--obligation--rating--of--A--or--higher from--Standard--6--Poor's--or--its--successor--A3--or--higher--from Moody's--Investors--Service--or--its--successor--A--or--higher--from Buff--6--Pheips--or--its--successor--A--or--higher--from--Fitch--IIEA or--its--successor--in--an--amount--equal--to--at--least--five--percent--of the--amount--of--revenue--for--the--last--12--month--period--shown--on--the applicant's--last--financial--statements--that--have--received--an accountant's--report--as--defined--in--17-PCR-210-1-02-210-2-01--and 210-2-02--as--of--April--17--1998--that--certifies--those--financial statements--to--be--free--of--material--misstatement--the--applicant shall--provide--a--copy--of--the--following:

- A) The--line--of--credit--or--revolving--credit--agreement?
- B) The--Standard--6--Poor's--Investment--Service--Buff--6 Pheips--or--Fitch--IIEA--ratings--report--that--presents--the--debt security--rating--of--the--financial--institution--extending--the credit?
- C) Its--certified--financial--statements--as--defined--in--17-PCR-210-1-02--and--210-3-01--to--210-3-05--as--of--April--17--1998--and 210-2-02--as--of--April--17--1998?
- D) No--incorporation--of--the--Code--of--Federal--Regulations--in--this--Section 455-110--includes--any--inter--amendment--or--edition?

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 451.120 Technical Qualifications under Subpart B

- a) An applicant that uses electric generation, transmission or distribution facilities that it owns, controls, or operates in serving customers shall be deemed to possess sufficient technical capabilities to serve nonresidential retail customers with maximum electrical demand of one megawatt or more if it maintains a technical staff on duty or on call 24 hours each day to operate and maintain applicant's facilities as needed and whose technical staff's minimum total four years of previous experience include at least two years demonstrated electric sales and at least two years operational experience. In addition, an applicant that uses electric generation, transmission or distribution facilities that it owns, controls, or operates in serving

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customers shall demonstrate its ability to provide, or that it has arranged to provide, a scheduling facility with 24 hour staffed operation for coordination with control centers of scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation.

- b) Any other applicant shall be deemed to possess sufficient technical capabilities to serve nonresidential retail customers with maximum electrical demand of one megawatt or more if it has staff with 2 years demonstrated electric sales and 2 years operational experience and provides, or has arranged to provide, a scheduling facility with 24 hour staffed operation for coordination with control centers of scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 451.130 Managerial Qualifications under Subpart B

An applicant shall be deemed to possess sufficient managerial capabilities to serve nonresidential retail customers with maximum electrical demands of one megawatt or more if it has one or more management persons with three or more years of experience in a management position with a business enterprise.

- a) The applicant shall include in its application an exhibit containing occupational background information on the persons or agents who are being used to meet the requirements of this Section.
- b) The applicant shall include in its application an exhibit containing a corporate organizational chart and indicate the position of the persons or agents who are being used to meet the requirements of this Section.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 451.140 Qualifications of Agents and Contractors under Subpart B

An applicant may meet the requirements of Sections 451.120 and 451.130 by entering into one or more contracts with others to provide the required services, provided that:

- a) Each agent and contractor on whom the applicant relies to meet Section 451.120 or 451.130 is disclosed in the application;
- b) The term of each contract is disclosed in the application; and
- c) The applicant shall certify that the agent or contractor will comply with all Sections of Part 451 applicable to the function or functions to be performed by the respective agent or contractor.

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(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 451.160 Commission Order in Expedited Proceedings under Subpart B

The Commission shall issue an order granting or denying an application filed under this Subpart B within 45 days after the date on which a complete application has been filed with the Commission and ~~year the date on which the~~ notice of the application's filing is published in the Official State Newspaper as provided by the Notice by Publication Act [715 ILCS 5] ~~whenever is later~~.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 451.160 Confidential Documentation (Repealed)

~~If any of the information to be disclosed is privileged or confidential, the applicant should designate which information is privileged and confidential. Such information shall be marked as confidential and submitted separately under seal to the clerk of the Illinois Commerce Commission. The applicant is required to explain why such information is entitled to such protection in a supporting document pursuant to Section 451.30(d)(1). The determination of whether such information is entitled to such protection will be ruled upon by the Commission in conjunction with its determination of the certification.~~

(Source: Repealed at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 451.220 Financial Qualifications under Subpart C

a) ~~The applicant shall execute and maintain a bond issued by a surety company authorized to transact business in the State of Illinois in favor of the People of the State of Illinois in the amount of \$50,000 if the applicant seeks to serve only nonresidential retail customers with maximum electrical demands of one megawatt or more or \$150,000 if the applicant seeks to serve nonresidential retail customers with annual electrical consumption greater than 15,000 kWh. The bond shall be conditioned upon the full and faithful performance of all duties and obligations of the applicant as an ARS. The cost of the bond shall be paid by the applicant. The applicant shall provide a copy of this bond as part of its application for certification. An applicant shall be deemed to possess sufficient financial resources to be certified as an ARS able to serve only nonresidential retail customers with annual electrical consumption in excess of 15,000 kilowatt hours if it meets any of the following criteria:~~

1) The applicant maintains at least one of the following commercial

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paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, D-2 or higher from Duff & Phelps or its successor, or F-2 or higher from Fitch IBCA or its successor; BBB- or higher of the following long-term credit bond ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, BBB- or higher from Duff & Phelps or its successor, or BBB- or higher from Fitch IBCA or its successor. The applicant shall provide with its application a copy of the ratings agency reports that present the these ratings of the applicant.

2) The applicant maintains has a borrowing agreement with an affiliate that has at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, D-2 or higher from Duff & Phelps or its successor, or F-2 or higher from Fitch IBCA or its successor; or at least one of the following long-term credit bond ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, BBB- or higher from Duff & Phelps or its successor, or BBB- or higher from Fitch IBCA or its successor. The amount of credit available to the applicant under the borrowing agreement shall be no less than the greater of \$750,000 or 7.5% of the amount of the applicant's revenue for its most recently completed fiscal year. That amount of revenue must appear in the applicant's certified financial statements that have received an accountant's report that certifies those financial statements to be free of material misstatement. The borrowing agreement shall be valid for a period of not less than one year. The applicant shall provide a copy of the following:

- A) The ratings agency reports that present the ratings of the affiliate with which the applicant maintains the borrowing agreement; and
  - B) The borrowing agreement; or
  - C) The applicant's certified financial statements; and
  - D) The applicant's report for the applicant's certified financial statements.
- 3) The obligations of the applicant arising from the acquisition of electric energy, and the fuel required to produce electric energy, for sale or lease or in exchange for other value received, or from the delivery or furnishing of electric power or energy to one or more retail customers, are covered under an unconditional guarantee, payment bond, or letter of credit in an amount that is no less than the greater of \$750,000 or 7.5% of the amount of the applicant's revenue from the sale of electric energy for the most recently completed fiscal year. That amount



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of revenue must appear in the applicant's certified financial statements that have received an accountant's report that certifies those financial statements to be free of material misstatement. The unconditional guarantee, payment bond, or letter of credit shall be valid for a period of not less than one year. Have been unconditionally guaranteed by an affiliate of the applicant that maintains at least one of the following commercial paper ratings: A-2 or higher from Moody's Investors Service or its successor, A-3 or higher from Moody's Investors Service or its successor, P-2 or higher from Duff & Phelps or its successor, B-2 or higher from Pitch IBCA or its successor, or at least one of the following long-term bond ratings: BBB- or higher from Standard & Poor's or its successor, BBB- or higher from Moody's Investors Service or its successor, BBB- or higher from Duff & Phelps or its successor, BBB- or higher from Pitch IBCA or its successor, or at least one of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, BBB- or higher from Duff & Phelps or its successor, or BBB- or higher from Pitch IBCA or its successor. The applicant shall provide a copy of the following:

- i) The ratings agency reports that present the ratings of the affiliate that is the guarantor, and
  - ii) The unconditional guarantee;
  - iii) The applicant's certified financial statements; and
  - iv) The accountant's report for the certified financial statements of the applicant.
- B) Payment Bond. The payment bond or payment bonds shall be issued by a surety authorized to transact business in the State of Illinois. The applicant shall provide a copy of the following:
- i) The payment bonds;
  - ii) The authorization for the surety to transact business in the State of Illinois;
  - iii) The certified financial statements of the applicant; and
  - iv) The accountant's report for the certified financial statements of the applicant.

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C) Letter of Credit. The letter of credit shall be irrevocable and issued by a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, A- or higher from Duff & Phelps or its successor, or A- or higher from Pitch IBCA or its successor. The applicant shall provide a copy of the following:

- i) The letter of credit;
  - ii) The ratings agency report that presents the long-term obligation rating of the financial institution extending the credit;
  - iii) The certified financial statements of the applicant; and
  - iv) The accountant's report for the certified financial statements of the applicant.
- D) This option is only available to an applicant that will engage in activities that could result in the applicant holding an ownership interest in or taking title to electric energy for the purpose of sale or resale to Illinois retail customers.

4) The applicant certifies that it will offer to reimburse its Illinois retail customers for the additional costs those customers incur to acquire electric energy as a result of the applicant's failure to comply with a contractual obligation to supply such energy. The applicant's prospective obligation to reimburse Illinois retail customers shall be covered by an unconditional guarantee, payment bond, or letter of credit in an amount equal to the product of 1080 times an estimate of the maximum number of megawatts the applicant expects to schedule over the next twelve months times the average of the 45 highest daily market prices of electric energy traded during the previous year. Each January, the Commission shall choose a published price index for electricity for use in this subsection (a)(4). The daily market price of electric energy shall equal the published price index for electricity traded in Illinois, except in the event that no price index for electricity traded in the State of Illinois is published, then the daily market price of electricity shall be determined by the use of a published price index for electricity traded at the nearest location to the State of Illinois. The unconditional guarantee, payment bond, or letter of credit shall be valid for a period of not less than one year.

A) Unconditional Guarantee. The guarantor shall be an affiliate of the applicant that maintains at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, B-2 or higher

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from Duff & Phelps or its successor, or P-2 or higher from Fitch IBCA or its successor, or at least one of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, BBB- or higher from Duff & Phelps or its successor, or BBB- or higher from Fitch IBCA or its successor. The applicant shall provide a copy of the following:

- i) The ratings agency reports that present the ratings of the affiliate that is the guarantor;
- ii) The unconditional guarantee; and
- iii) A good faith estimate of the peak amount of MW the applicant will schedule during the remainder of the current calendar year.

B) Payment Bond. The payment bond or payment bonds shall be issued by a surety authorized to transact business in the State of Illinois. The applicant shall provide a copy of the following:

- i) The payment bonds;
- ii) The authorization for the surety to transact business in the State of Illinois; and
- iii) A good faith estimate of the peak amount of MW the applicant will schedule during the remainder of the current calendar year.

C) Letter of Credit. The letter of credit shall be irrevocable and issued by a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, A- or higher from Duff & Phelps or its successor, or A- or higher from Fitch IBCA or its successor. The applicant shall provide a copy of the following:

- i) The letter of credit;
- ii) The ratings agency report that presents the long-term obligation rating of the financial institution extending the credit; and
- iii) A good faith estimate of the peak amount of MW the applicant will schedule during the remainder of the current calendar year.

54) The applicant maintains has a line of credit or revolving credit agreement from a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, A- or higher from Duff & Phelps or its successor, or A- or higher from Fitch IBCA or its successor. The in-an amount of the line of credit or revolving credit agreement shall be no less than the greater of \$750,000 or equal-to-at-least 7.5% of

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the amount of the applicant's revenue for the most recently completed fiscal year. ~~last-12-month-period--shown-on--the applicant's--last~~ That amount of revenue must appear in the applicant's certified financial statements that have received an accountant's report, ~~as-defined-in-17-CFR-210.1-02-210-2-01--and 210-2-02--as-of-April-1-1990~~, that certifies those financial statements to be free of material misstatement. The line of credit or revolving credit agreement shall be valid for a period of not less than one year. The applicant shall provide a copy of the following:

- A) The line of credit or revolving credit agreement;
- B) The Standard & Poor's or Moody's Investment Service-Buff's Phelps or Fitch-IBCA ratings agency report that presents the long-term obligation debt-security rating of the financial institution extending the credit;
- C) The applicant's its certified financial statements, ~~as defined-in-17-CFR-210.1-02-and-210-3-01-to-210-3-05-as-of-April-1-1990~~; and
- D) The accountant's report for the applicant's certified financial statements, ~~as-defined-in-17-CFR-210.1-02-and 210-2-02-as-of-April-1-1990~~.

6) The applicant earns 12 points on the financial ratios set forth in subsection (6)(A):

- A) Financial Ratios
  - i) Pre-Tax Interest Coverage (rounded to the nearest 0.1)
 

4.4 or above:	5 points
3.9 to 4.3:	4 points
3.4 to 3.8:	3 points
2.9 to 3.3:	2 points
2.4 to 2.8:	1 point
2.3 or below:	0 points

- ii) Funds from Operations Interest Coverage (rounded to the nearest 0.1)
 

4.9 or above:	5 points
4.4 to 4.8:	4 points
3.9 to 4.3:	3 points
3.4 to 2.8:	2 points
2.9 to 3.3:	1 point
2.8 or below:	0 points

- iii) Funds from Operations to Total Debt (rounded to the nearest 1%)

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- 384 or above: 5 points  
 394 to 374: 4 points  
 284 to 324: 3 points  
 234 to 274: 2 points  
 184 to 224: 1 point  
 174 or below: 0 points

iv) Total Debt to Total Capitalization (rounded to the nearest 1%)

- 504 or below: 5 points  
 514 to 534: 4 points  
 544 to 564: 3 points  
 574 to 594: 2 points  
 604 to 624: 1 point  
 634 or above: 0 points

B) The applicant shall provide the following:

- i) The applicant's certified financial statements for its most recently completed fiscal year;  
 ii) The accountant's report for the applicant's certified financial statements; and  
 iii) A schedule showing the calculation of each financial ratio with a reference to the applicant's certified financial statements provided for each input of the calculation.

c) An applicant that will engage in the sale or resale of electric energy to Illinois retail customers or the purchase or sale of derivative securities in electric energy or otherwise engage in any activity that could result in the applicant holding an ownership interest in or taking title to electric energy for the purpose of sale or resale to Illinois retail customers that does not meet any of the criteria set forth in subsection (b) of this Section may demonstrate it has sufficient financial resources for the services for which it seeks a certificate of service authority if it has a line of credit or revolving credit agreement from a financial institution with a long term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, A- or higher from Bufile & Phelps or its successor or A- or higher from Fitch IBCA or its successor, if the amount of the line of credit or revolving credit agreement is of insufficient size or if the financial documents do not otherwise establish that the applicant possesses adequate financial resources to provide the service for which it seeks a certificate of service authority. The Commission shall deny granting that certificate of service authority in its application, the applicant shall provide the following:

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- 1) An explanation of why it does not meet any of the criteria set forth in subsection (b);  
 2) The amount of its line of credit or revolving credit agreement;  
 3) An explanation of why the amount of its line of credit or revolving credit agreement is sufficient for the services for which it seeks a certificate of service authority and how its supporting documentation demonstrates that sufficiency;  
 4) The line of credit or revolving credit agreement;  
 5) The Standard & Poor's Moody's Investor Service Bufile & Phelps or Fitch IBCA ratings report that presents the debt security rating of the financial institution extending the credit; and  
 6) The applicant's certified financial statements as defined in 17 CFR 240.1-02 and 240.3-04 to 240.3-05 as of April 17, 1997, and as of April 17, 1998, if the applicant does not have certified financial statements and an accountant's report, the applicant shall provide all of the following:

- A) A balance sheet at the date of application that includes a statement of assets, liabilities and owner's equity;  
 B) An income statement at the date of application (provide projected income statement if entity has not yet started operations);  
 C) A listing of shareholders, owners, partners or proprietors with ownership interests in excess of 5% and the amount of their respective ownership interests;  
 D) A listing of any entities with which the applicant expects to enter into a contract within the next 12 months concerning the provision of electric power or energy or the delivery or furnishing of electric power or energy to retail customers;  
 E) Copies of all contracts with outside contractors and with all affiliated entities concerning the provision of electric power or energy or the delivery or furnishing of electric power or energy to retail customers;  
 F) A projected budget for the next three fiscal years following the current year, and  
 G) If available:  
 1) Unaudited financial statements (for the most recent period available) including any compilation or review opinions;  
 2) The most recent federal and state income tax return; and  
 3) General ledgers for the most recent 12-month period available.  
 b) An applicant such as an aggregator or power marketer that will not engage in the sale or resale of electric energy to Illinois retail

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customers or the purchase or sale of derivative securities in electric energy, or otherwise engage in any activity that could result in the applicant holding an ownership interest in or taking title to electric energy for the purpose of sale or resale to Illinois retail customers that does not either meet or qualify for certification under any of the criteria set forth in subsection (a) (4) shall describe its financial resources and explain why those financial resources are sufficient for the goods and services it seeks to ~~will~~ provide. If the applicant's financial resources are not sufficient for the services it seeks to ~~will~~ provide or if the financial documents do not otherwise establish that the applicant possesses adequate financial resources to provide the service for which it seeks a certificate of service authority, the Commission shall deny granting that certificate of service authority. In its application, the applicant shall provide the following:

- 1) An explanation of how its supporting documentation demonstrates that its financial resources are sufficient for the goods and services it seeks to ~~will~~ provide; and
- 2) The applicant's certified financial statements, ~~as defined in 17 CFR 210.1-02 and 210.3-01 to 210.3-05 as of April 1, 1990, and~~ ~~as of April 1, 1990~~, ~~as defined in 17 CFR 210.1-02 and 210.2-02 as of April 1, 1990~~. If the applicant does not have certified financial statements and an accountant's report, the applicant shall provide all of the following:
  - A) A balance sheet that reflects the applicant's current financial condition and at the date of application that includes a statement of assets, liabilities and owner's equity;
  - B) An income statement that reflects the applicant's current earnings at the date of application (if the applicant has not yet started operations, it shall provide a projected income statement if entity has not yet started operations);
  - C) A listing of shareholders, owners, partners or proprietors with ownership interests in excess of 5% and the amount of their respective ownership interests;
  - D) A listing of any entities with which the applicant expects to enter into a contract within the next 12 months concerning the provision of electric power or energy, or the delivery or furnishing of electric power or energy, to retail customers;
  - E) Copies of all contracts with outside contractors and with all affiliated entities concerning the provision of electric power or energy, or the delivery or furnishing of electric power or energy, to retail customers;
  - F) A projected budget for the next three fiscal years following the current year; and

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G) If available:

- i) Unaudited financial statements (for the most recent period available) including any compilation or review opinions;
  - ii) The most recent federal and state income tax return, and
  - iii) General ledgers for the most recent 12 month period available; and
  - iv) The applicant's Dun & Bradstreet Business Information Report.
- 5) An applicant that will provide electric power and energy with property, plant, and equipment that it owns, controls, or operates shall have in force, and provide proof that it has in force, general liability insurance coverage in the amount of at least \$100,000,000.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 451.230 Technical Qualifications under Subpart C

- a) An applicant that uses electric generation, transmission or distribution facilities that it owns, controls, or operates in serving customers shall be deemed to possess sufficient technical capabilities to serve retail customers identified in this Subpart if it maintains a technical staff on duty or on call 24 hours each day to operate and maintain applicant's facilities as needed, and meets the criteria in subsections (b) and (c) of this Section.
- b) An applicant shall be deemed to possess sufficient technical capabilities to serve retail customers identified in this Subpart if it has individuals on its staff with demonstrated two years electric sales experience, two years electric system operational experience, three months experience with OASIS reservation processes, three months experience with NERC or its successor tagging processes, and one year experience working with rules and practices established by NERC and MAIN and/or MAPP or their successors and provides, or has arranged to provide, the following:
  - 1) A scheduling facility with 24 hour manned operation for coordination with control centers of scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation; and
  - 2) The applicant shall designate in its application, and shall agree thereafter to maintain, a telephone number, fax number, and address where its staff can be directly reached at all times. Maintenance of an answering service or machine, pager, or similar message-taking procedure does not satisfy this requirement.
- c) The applicant shall include in its application an exhibit containing

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occupational background information on the persons who are being used to meet the requirements of this Section.

- d) In the event the applicant does not meet length of experience qualifications set forth in this Section, the applicant shall demonstrate the extent its technical resources and abilities match the services that it intends to provide to its customers. The Commission may impose such terms and conditions as deemed necessary in order to insure the applicant is technically qualified, commensurate with the anticipated scope of the service to be provided and customers to be served.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.250 Qualifications of Agents and Contractors under Subpart C**

An applicant may meet the requirements of Sections 451.230 and 451.240 by entering into one or more contracts with others to provide the required services, provided that:

- a) Each agent and contractor on whom the applicant relies to meet Section 451.230 or 451.240 is disclosed in the application; and  
b) The term of each contract is disclosed in the application; and  
c) The applicant shall certify that the agent or contractor will comply with all Sections of Part 451 applicable to the function or functions to be performed by the respective agent or contractor.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.260 Commission Order in Proceedings under Subpart C**

The Commission shall issue an order granting or denying an application filed under this Subpart C within 45 days after the date on which a complete application has been properly filed with the Commission and \_\_\_\_\_ or the date on which the notice of the application's filing is published in the Official State Newspaper as provided by the Notice by Publication Act (715 ILCS 5), \_\_\_\_\_, whichever is later.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.270 Confidential Documentation under Subpart C (Repealed)**

~~If any of the information to be disclosed is privileged or confidential, the applicant should designate when information is privileged and confidential. Such information shall be marked as confidential and submitted separately~~

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~~under seal to the Clerk of the Illinois Commerce Commission. Applicant is required to explain why such information is entitled to such protection in a supporting document pursuant to Section 451.30(f)(1). The determination of whether such information is entitled to such protection will be ruled upon by the Commission in conjunction with its determination of the certification.~~

(Source: Repealed at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**SUBPART D: PROCEDURES FOR APPLICANTS SEEKING TO SERVE ALL RETAIL CUSTOMERS INCLUDING SMALL-COMMERCIAL-RETAIL-CUSTOMERS-BUT EXCLUDING RESIDENTIAL CUSTOMERS**

**Section 451.320 Financial Qualifications under Subpart D**

- a) ~~The applicant shall execute and maintain a bond issued by a surety company authorized to transact business in the State of Illinois in favor of the people of the State of Illinois in the amount of \$500,000. The bond shall be conditioned upon the full and faithful performance of all duties and obligations of the applicant as an ARES. The cost of the bond shall be paid by the applicant. The applicant shall provide a copy of this bond as part of its application for certification. b) An applicant shall be deemed to possess sufficient financial resources to be certified as an ARES able to serve only non-residential customers if it meets any of the following criteria:~~

- 1) The applicant maintains at least one of the following commercial paper ratings: A-2 or higher from Moody's Investors Service or its successor, P-2 or higher from Moody's Investors Service or its successor, D-2 or higher from Duff & Phelps or its successor, or at least one of the following long-term credit bond ratings: BBB- or higher from Standard & Poor's or its successor, Ba3 or higher from Moody's Investors Service or its successor, BBB- or higher from Duff & Phelps or its successor, or BBB- or higher from Fitch IBCA or its successor. The applicant shall provide with its application a copy of the ratings agency reports that present the these ratings of the applicant.

- 2) The applicant maintains has a borrowing agreement with an affiliate that has at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, D-2 or higher from Duff & Phelps or its successor, or F-2 or higher from Fitch IBCA or its successor; or at least one of the following long-term credit bond ratings: BBB- or higher from Standard & Poor's or its successor, Ba3 or higher from Moody's Investors Service or its successor, BBB- or higher from Duff &

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Phelps or its successor, or BBB- or higher from Fitch IBCA or its successor. The amount of credit available to the applicant under the borrowing agreement shall be no less than the greater of \$1,000,000 or 1% of the amount of the applicant's revenue for its most recently completed fiscal year. That amount of revenue must appear in the applicant's certified financial statements that have received an accountant's report that certifies those financial statements to be free of material misstatement. The borrowing agreement shall be valid for a period of not less than one year. The applicant shall provide a copy of the following:

- A) The ratings agency reports that present the ratings of the affiliate with which the applicant maintains the borrowing agreement; and
- B) The borrowing agreement;
- C) The applicant's certified financial statements; and
- D) The accountant's report for the applicant's certified financial statements.

- 3) The obligations of the applicant arising from the acquisition of electric energy, and the fuel required to produce electric energy, for sale or lease or in exchange for other value received, or from the delivery or furnishing of electric power or energy to one or more retail customers, are covered under an unconditional guarantee, payment bond, or letter of credit in an amount that is no less than the greater of \$1,000,000 or 10% of the amount of the applicant's revenue from the sale of electric energy for the most recently completed fiscal year. That amount of revenue must appear in the applicant's certified financial statements that have received an accountant's report that certifies those financial statements to be free of material misstatement. The unconditional guarantee, payment bond, or letter of credit shall be valid for a period of not less than one year. have been unconditionally guaranteed by an affiliate of the applicant that maintains at least one of the following commercial paper ratings--A-2 or higher--from Moody's or its successor, P-2 or higher from Moody's Investors Service or its successor, B-2 or higher from Fitch IBCA or its successor, or at least one of the following long-term bond ratings: BBB- or higher from Standard & Poor's or its successor, Ba3 or higher from Moody's Investors Service or its successor, BBB- or higher from Fitch IBCA or its successor. The applicant shall provide a copy of the following:

- A) Unconditional Guarantee. The guarantor shall be an affiliate of the applicant that maintains at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from

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Moody's Investors Service or its successor, D-2 or higher from Duff & Phelps or its successor, or P-2 or higher from Fitch IBCA or its successor, or at least one of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Ba3 or higher from Moody's Investors Service or its successor, BBB- or higher from Duff & Phelps or its successor, or BBB- or higher from Fitch IBCA or its successor. The applicant shall provide a copy of the following:

- iA) The ratings agency reports that present the ratings of the affiliate that is the guarantor; and
- iB) The unconditional guarantee;
- ii) The applicant's certified financial statements; and
- iv) The accountant's report for the certified financial statements of the applicant.

- B) Payment Bond. The payment bond or payment bonds shall be issued by a surety authorized to transact business in the State of Illinois. The applicant shall provide a copy of the following:

- i) The payment bonds;
- ii) The authorization for the surety to transact business in the State of Illinois;
- iii) The certified financial statements of the applicant; and

- iv) The accountant's report for the certified financial statements of the applicant.
- C) Letter of Credit. The letter of credit shall be irrevocable and issued by a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, A- or higher from Duff & Phelps or its successor, or A- or higher from Fitch IBCA or its successor. The applicant shall provide a copy of the following:

- i) The letter of credit;
- ii) The ratings agency report that presents the long-term obligation rating of the financial institution extending the credit;
- iii) The certified financial statements of the applicant; and
- iv) The accountant's report for the certified financial statements of the applicant.

- D) This option is only available to an applicant that will engage in activities that could result in the applicant holding an ownership interest in or taking title to electric energy for the purpose of sale or resale to Illinois retail customers.

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- 4.) The applicant certifies that it will offer to reimburse its Illinois retail customers for the additional costs those customers incur to acquire electric energy as a result of the applicant's failure to comply with a contractual obligation to supply such energy. The applicant's prospective obligation to reimburse Illinois retail customers shall be covered by an unconditional guarantee, payment bond or letter of credit in an amount equal to the product of 1080 times an estimate of the maximum number of megawatts the applicant expects to schedule over the next twelve months times the average of the 45 highest daily market prices of electric energy traded during the previous year. Each January, the Commission shall choose a published price index for electricity for use in this subsection (a)(4). The daily market price of electric energy shall equal the published price index for electricity traded in Illinois, except in the event that no price index for electricity traded in the State of Illinois is published, then the daily market price of electricity shall be determined by the use of a published price index for electricity traded at the nearest location to the State of Illinois. The unconditional guarantee, payment bond, or letter of credit shall be valid for a period of not less than one year.

A) Unconditional Guarantee. The guarantor shall be an affiliate of the applicant that maintains at least one of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, B-2 or higher from Duff & Phelps or its successor, or F-2 or higher from Fitch IBCA or its successor; or at least one of the following long-term credit ratings: BBB- or higher from Standard & Poor's or its successor, Baa3 or higher from Moody's Investors Service or its successor, BBB- or higher from Duff & Phelps or its successor, or BBB- or higher from Fitch IBCA or its successor. The applicant shall provide a copy of the following:

- i) The ratings agency reports that present the ratings of the affiliate that is the guarantor;
  - ii) The unconditional guarantee; and
  - iii) A good faith estimate of the peak amount of MW the applicant will schedule during the remainder of the current calendar year.
- B) Payment Bond. The payment bond or payment bonds shall be issued by a surety authorized to transact business in the State of Illinois. The applicant shall provide a copy of the following:
- i) The payment bonds;
  - ii) The authorization for the surety to transact business

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- in the State of Illinois; and
- iii) A good faith estimate of the peak amount of MW the applicant will schedule during the remainder of the current calendar year.

C) Letter of Credit. The letter of credit shall be irrevocable and issued by a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, A- or higher from Duff & Phelps or its successor, or A- or higher from Fitch IBCA or its successor. The applicant shall provide a copy of the following:

- i) The letter of credit;
- ii) The ratings agency report that presents the long-term obligation rating of the financial institution extending the credit; and
- iii) A good faith estimate of the peak amount of MW the applicant will schedule during the remainder of the current calendar year.

54) The applicant maintains a line of credit or revolving credit agreement from a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, A- or higher from Duff & Phelps or its successor, or A- or higher from Fitch IBCA or its successor. The amount of the line of credit or revolving credit agreement shall be no less than the greater of \$1,000,000 or equal to at least 10% of the amount of the applicant's revenue for the last-12-month period--shown-on-the-applicant's--last most recently completed fiscal year. That amount of revenue must appear in the applicant's certified financial statements that have received an accountant's report--as-defined-in-17-CPR-210-01-02-210-01--and 210-2-02--as-of-April-1-1999, that certifies those financial statements to be free of material misstatement. The line of credit or revolving credit agreement shall be valid for a period of not less than one year. The applicant shall provide a copy of the following:

- A) The line of credit or revolving credit agreement;
- B) The Standard--as-Poor's--Moody's--Investment-Service--Duff-&Phelps--or-Fitch-IBCA ratings agency report that presents the long-term obligation debt--security rating of the financial institution extending the credit;
- C) The applicant's its certified financial statements--as-defined-in--17-CPR-210-01-02-and-210-3-01-to-210-3-05-as-of-April-1-1999; and
- D) The accountant's report for the applicant's certified financial statements 7--as-defined-in-17-CPR-210-01-02-and

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210-2-02-as-of-April-1-1998.

- 6) The applicant earns 12 points on the financial ratios set forth in subsection (6)(A):

A) Financial Ratios

- 1) Pre-Tax Interest Coverage (rounded to the nearest 0.1)

4.9 or above: 5 points  
 4.4 to 4.8: 4 points  
 3.9 to 4.3: 3 points  
 3.4 to 3.8: 2 points  
 2.9 to 3.3: 1 point  
 2.8 or below: 0 points

- ii) Funds from Operations Interest Coverage (rounded to the nearest 1%)

5.4 or above: 5 points  
 4.9 to 5.3: 4 points  
 4.4 to 4.8: 3 points  
 3.9 to 4.3: 2 points  
 3.4 to 3.8: 1 point  
 2.9 or below: 0 points

- iii) Funds from Operations to Total Debt (rounded to the nearest 1%)

45% or above: 5 points  
 40% to 44%: 4 points  
 35% to 39%: 3 points  
 30% to 34%: 2 points  
 25% to 29%: 1 point  
 24% or below: 0 points

- iv) Total Debt to Total Capitalization (rounded to the nearest 1%)

41% or below: 5 points  
 42% to 44%: 4 points  
 45% to 47%: 3 points  
 48% to 50%: 2 points  
 51% to 53%: 1 point  
 54% or above: 0 points

- B) The applicant shall provide the following:

- 1) The applicant's certified financial statements for its most recently completed fiscal year;

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- ii) The accountant's report for the applicant's certified financial statements; and

- iii) A schedule showing the calculation of each financial ratio with a reference to the applicant's certified financial statements provided for each input of the calculation.

- c) An applicant that will engage in the sale or resale of electric energy to Illinois retail customers or the purchase or sale of derivative securities in electric energy or otherwise engage in any activity that could result in the applicant holding an ownership interest in or taking title to electric energy for the purpose of sale or resale to Illinois retail customers that does not meet any of the criteria set forth in subsection (b) of this Section may demonstrate it has sufficient financial resources for the services for which it seeks a certificate of service authority if it has a line of credit or revolving credit agreement from a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, A- or higher from Bufile Phelps or its successor or A- or higher from Pitch IBCA or its successor if the amount of the line of credit or revolving credit agreement is of insufficient size or if the financial documents do not otherwise establish that the applicant possesses adequate financial resources to provide the service for which it seeks a certificate of service authority. The Commission shall deny granting that certificate of service authority in its application; the applicant shall provide the following:

- 1) An explanation of why it does not meet any of the criteria set forth in subsection (b);

- 2) The amount of its line of credit or revolving credit agreement;
- 3) An explanation of why the amount of its line of credit or revolving credit agreement is sufficient for the services for which it seeks a certificate of service authority and how its supporting documentation demonstrates that sufficiency;

- 4) The line of credit or revolving credit agreement;

- 5) The Standard & Poor's, Moody's, Investment Service, Bufile Phelps or Pitch IBCA ratings report that presents the debt security rating of the financial institution extending the credit; and

- 6) The applicant's certified financial statements as defined in 17 CFR 210.1-02 and 210.3-05 as of April 1, 1998, and as of April 1, 1999, if the applicant does not have certified financial statements and an accountant's report; the applicant shall provide all of the following:

- A) A balance sheet at the date of application that includes a statement of assets, liabilities and owner's equity;

- B) An income statement at the date of application (provide



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projected income statement if entity has not yet started operations?;

E) A listing of shareholders, owners, partners or proprietors with respective interests in excess of 5% and the amount of their respective ownership interests?

F) A listing of any entities with which the applicant expects to enter into a contract within the next 12 months concerning the provision of electric power or energy, or the delivery or furnishing of electric power or energy, to retail customers;

G) Copies of all contracts with outside contractors and with all affiliated entities concerning the provision of electric power or energy, or the delivery or furnishing of electric power or energy, to retail customers?

H) A projected budget for the next three fiscal years following the current year; and

I) If available:

i) Unaudited financial statements (for the most recent period available) including any compilation or review opinions;

ii) The most recent federal and state income tax return; and

iii) General ledgers for the most recent 12 month period available;

bd) An applicant such as an aggregator or power marketer that will not engage in the sale or resale of electric energy to Illinois retail customers or the purchase or sale of derivative securities in electric energy or otherwise engage in any activity that could result in the applicant holding an ownership interest in or taking title to electric energy for the purpose of sale or resale to Illinois retail customers that does not either meet or qualify for certification under any of the criteria set forth in subsection (a)(b) shall describe its financial resources and explain why those financial resources are sufficient for the goods and services it seeks to will provide. If the applicant's financial resources are not sufficient for the services it seeks to will provide or if the financial documents do not otherwise establish that the applicant possesses adequate financial resources to provide the service for which it seeks a certificate of service authority, the Commission shall deny granting that certificate of service authority. In its application, the applicant shall provide the following:

1) An explanation of how its supporting documentation demonstrates that its financial resources are sufficient for the goods and services it seeks to will provide; and

2) The applicant's certified financial statements as defined in 17

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accountant's report, as defined in 17-EPB-210.1-02--and--210.2-02 as of April 1, 1998. If the applicant does not have certified financial statements and an accountant's report, the applicant shall provide all of the following:

A) A balance sheet that reflects the applicant's current financial condition and as the date of application that includes a statement of assets, liabilities and owner's equity;

B) An income statement that reflects the applicant's current earnings as the date of application; If the applicant has not yet started operations, it shall provide a projected income statement if entity has not yet started operations;

C) A listing of shareholders, owners, partners or proprietors with ownership interests in excess of 5% and the amount of their respective ownership interests;

D) A listing of any entities with which the applicant expects to enter into a contract within the next 12 months concerning the provision of electric power or energy, or the delivery or furnishing of electric power or energy, to retail customers;

E) Copies of all contracts with outside contractors and with all affiliated entities concerning the provision of electric power or energy, or the delivery or furnishing of electric power or energy, to retail customers;

F) A projected budget for the next three fiscal years following the current year; and

G) If available:

i) Unaudited financial statements (for the most recent period available) including any compilation or review opinions;

ii) The most recent federal and state income tax return; and

iii) General ledgers for the most recent 12 month period available; and-

iv) The applicant's Dun & Bradstreet Business Information Report.

c) An applicant that will provide electric power and energy with property, plant, and equipment that it owns, controls, or operates shall have in force, and provide proof that it has in force, general liability insurance coverage in the amount of at least \$100,000,000.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 451.350 Qualifications of Agents and Contractors under Subpart D

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An applicant may meet the requirements of Sections 451.330 and 451.340 by entering into one or more contracts with others to provide the required services, provided that:

- a) Each agent and contractor on whom the applicant relies to meet Section 451.330 or 451.340 is disclosed in the application;
- b) The term of each contract is disclosed in the application; and
- cb) The applicant shall certify that the agent or contractor will comply with all Sections of Part 451 applicable to the function or functions to be performed by the respective agent or contractor.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.360 Commission Order in Proceedings under Subpart D**

The Commission shall issue an order granting or denying an application filed under this Subpart D within 45 days after the date on which a complete application has been filed with the Commission and ~~7-or-the-date-on-which-the~~ notice of the application's filing is published in the Official State Newspaper as provided by the Notice by Publication Act [715 ILCS 51]-~~whenever-is-later,~~ provided that the Commission can extend the time for considering an application filed under this Subpart D by up to 90 days, and can schedule a hearing on such an application. The Commission shall extend the time for considering an application and schedule a hearing if:

- a) The applicant has proposed limitations on the number of customers or the amount of load to be served;
- b) A party to the application proceeding has formally requested that the Commission hold hearings in a pleading that contains a verified prima facie showing that one or more of the allegations or certifications in the application is false or misleading; or
- c) Other facts or circumstances exist that will necessitate additional time or evidence in order to determine whether a certificate should be issued.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.370 Confidential Documentation under Subpart D (Repealed)**

~~If any of the information to be disclosed is privileged or confidential, the applicant should designate which information is privileged and confidential. Such information shall be marked as "confidential" and submitted separately under seal to the Clerk of the Illinois Commerce Commission. Applicant is required to explain why such information is entitled to such protection in a supporting document pursuant to Section 451.360(d)(1). The determination of whether such information is entitled to such protection will be ruled upon by~~

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~~the Commission in conjunction with its determination of the certification;~~

(Source: Repealed at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**SUBPART E: PROCEDURES FOR APPLICANTS SEEKING CERTIFICATION  
TO SERVE ONLY THEMSELVES OR AFFILIATED CUSTOMERS****Section 451.430 Qualifications of Agents and Contractors under Subpart E**

An applicant may meet the requirements of Section 451.420 by entering into one or more contracts with others to provide the required services, provided that:

- a) Each agent and contractor on whom the applicant relies to meet Section 451.420 is disclosed in the application; and

- b) The term of each contract is disclosed in the application; and
- cb) The applicant shall certify that the agent or contractor will comply with all Sections of Part 451 applicable to the function or functions to be performed by the respective agent or contractor.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.440 Commission Order in Proceedings under Subpart E**

The Commission shall issue an order granting or denying an application filed under this Subpart E within 45 days after the date on which a complete application has been properly filed with the Commission and ~~7-or-the-date-on-which-the~~ notice of the application's filing is published in the Official State Newspaper ~~whenever-is-later.~~

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.450 Confidential Documentation under Subpart E (Repealed)**

~~If any of the information to be disclosed is privileged or confidential, the applicant should designate which information is privileged and confidential. Such information shall be marked as "confidential" and submitted separately under seal to the Clerk of the Illinois Commerce Commission. Applicant is required to explain why such information is entitled to such protection in a supporting document filed with the application. The determination of whether such information is entitled to such protection will be ruled upon by the Commission in conjunction with its determination of the certification;~~

(Source: Repealed at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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SUBPART F: FINANCIAL QUALIFICATIONS FOR THE PROVISION OF SINGLE-BILLING SERVICE

Section 451.500 Applicability of Subpart F

The requirements of this Subpart are in addition to the requirements of Subpart A. This Subpart does not apply to electric cooperatives or municipal systems making an election under Section 17-300 of the Act to become an alternative retail electric supplier seeking expedited certification--to serve--only nonresidential retail customers with maximum electrical demands of one megawatt or more.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 451.510 Financial Qualifications under of Subpart F

An applicant may request authorization from the Commission to provide single billing services at the time it seeks certification as an ARES or at any time thereafter. However, under no circumstances may an ARES provide single billing services without authorization from the Commission. An applicant that seeks intends to provide single billing services shall demonstrate an ability to establish and maintain sufficient financial resources to satisfy the obligation to pay to the utility under single billing tariffs adopted pursuant to the Act (220 ILCS 5/16-118(b)) at such time the applicant applies to provide that service. The applicant for single billing services may demonstrate this creditworthiness in one of four ways:

a) The applicant may undertake to post and maintain a bond or bonds issued by a surety or financial institution chartered by the United States or the State of Illinois in favor of any Illinois utility in whose service territory the applicant will serve retail customers. The bond or bonds shall be in an amount equal to 15% of a good faith estimate of the total amount that the applicant expects to be obligated to pay to the utility under single billing tariffs adopted pursuant to Section 16-118(b) of the Act during the next twelve months. The applicant shall provide a copy of the bonding agreement(s) and the bond(s) to the Commission with the application at such time the applicant applies to provide single billing service. The bond(s) shall be conditioned on the full and timely payment of all amounts due to the utility in accordance with the terms specified in the single billing tariffs and shall be valid for a period of not less than one year. The applicant shall post the bond(s) with the utility within 10 days after being certified to provide single billing service and a replacement bond in the amount specified above, shall be filed with the Commission every three months thereafter.

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- b) The applicant may deliver an irrevocable letter of credit issued by a financial institution with a long-term obligation rating of A- or higher from Standard & Poor's or its successor, A3 or higher from Moody's Investors Service or its successor, A- or higher from Duff & Phelps or its successor, or A- or higher from Fitch IBCA or its successor in the same amount and in favor of the same parties as the bond that would otherwise be required. The letter of credit shall provide that a draft will be honored in accordance with the terms specified in the single billing tariffs. The initial letter of credit shall be valid for a period of not less than one year after the date on which the applicant begins to provide single billing service and it shall be renewed or replaced thereafter every 3 months so long as the ARES remains certified. The applicant shall provide a copy proposed form of the letter of credit and the ratings agency reports that present the long-term obligation ratings of the issuer of the letter of credit to the Commission with the application to provide single billing service. shall be filed at such a time the applicant applies to provide single billing service.
- c) The applicant maintains at least 2 of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, D-2 or higher from Duff & Phelps or its successor, or P-2 or higher from Fitch IBCA or its successor; or at least two of the following long-term credit bond ratings: BBB- or higher from Standard & Poor's or its successor, BBB- or higher from Moody's Investors Service or its successor, BBB- or higher from Duff & Phelps or its successor, or BBB- or higher from Fitch IBCA or its successor. The applicant shall provide a copy of the ratings agency reports that present applicant's these ratings to the Commission with its application at such time the applicant applies to provide single billing service and shall file an updated ratings report with the Chief Clerk of the Commission not less than once every 3 months.

- d) All the obligations of the applicant to Illinois utilities are have been unconditionally guaranteed by an affiliate of the applicant that maintains at least two of the following commercial paper ratings: A-2 or higher from Standard & Poor's or its successor, P-2 or higher from Moody's Investors Service or its successor, D-2 or higher from Duff & Phelps or its successor or P-2 or higher from Fitch IBCA or its successor; or at least two of the following long-term credit bond ratings: BBB- or higher from Standard & Poor's or its successor, BBB- or higher from Moody's Investors Service or its successor, BBB- or higher from Duff & Phelps or its successor, or BBB- or higher from Fitch IBCA or its successor. The unconditional guarantee shall be valid for a period of not less than one year. The applicant shall provide a copy of the ratings agency reports that present these ratings of the affiliate and a copy of the guarantee to the

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Commission with its application at such time the applicant applies to provide single-billing service and shall file an updated ratings report with the Chief Clerk of the Commission not less than once every 3 months.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**SUBPART H: PROCEDURES FOR REPORTING CONTINUING COMPLIANCE WITH CERTIFICATION REQUIREMENTS**

**Section 451.700 Applicability of Subpart H**

The requirements of this Subpart are in addition to the requirements of Subpart A. This Subpart does not apply to electric cooperatives or municipal systems making an election under Section 17-300 of the Act to become an alternative retail electric supplier.

(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.710 General Provisions**

a) All ARES shall continue to remain in compliance with the provisions of the Act and this Part, as now or hereafter amended. If an ARES received a certificate before the effective date of any provision of this Part, which provision applies to applicants seeking certification to serve customers with the same electrical demand or usage characteristics as the ARES, the ARES must demonstrate that it has come into compliance with such provision no later than January 31 of the year following the year during which such amendment took effect.

b) All reports required under this Subpart shall be under oath and shall be filed with the Chief Clerk of the Commission with copies provided to the Manager of the Energy Division and the Manager of the Financial Analysis Division or their successors. The reports shall be identified with the name of the ARES as it appears in the most recent Commission order granting the ARES certification.

c) All reports made to the Commission by any ARES and the contents thereof shall be open to public inspection, unless otherwise ordered by the Commission. Such reports shall be preserved in the office of the Commission.

(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.720 Erroneous or Defective Reports**

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a) When any report is erroneous or defective or appears to the Commission to be erroneous or defective, the Commission may notify the ARES to amend that report within 30 days, and before or after the termination of the period during which the Commission may examine the officers, agents, or employees, and books, records, accounts, vouchers, plans, equipment and property of the ARES, and correct items in the report the Commission finds defective or erroneous.

b) Any ARES that fails to make and file any report required by the Commission within the time specified, or to make specific answer to any question propounded by the Commission within 30 days after the time it is lawfully required to do so, or within such further time, not to exceed 90 days, as may in its discretion be allowed by the Commission, shall forfeit its certificate.

(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.730 Certification of Compliance with Section 16-115(d)(5) of the Act**

The ARES shall annually certify that it complies with the requirements of Section 16-115(d)(5) of the Act during January of each year after its certification. The applicant shall provide the following along with its certification:

- The ARES' name and street address;
- The ARES' Federal Employer Identification Number (FEIN); and
- Names and addresses of all of the ARES' affiliated companies involved in electric retail sales or purchases in North America.

(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.740 Financial Reporting Requirements**

The ARES shall provide a copy of only those documents that the ARES requires to demonstrate that it continues to possess sufficient financial resources to serve the retail customers for which it has received a certificate of services authority. The applicable documents shall be submitted at the times specified below:

- An ARES that seeks to demonstrate that it maintains sufficient financial resources to provide the services for which it has received a certificate of service authority using the criteria set forth in subsection (a)(1), (a)(2), (a)(3)(A), (a)(3)(C), (a)(4)(A), (a)(4)(C), or (a)(5) of Section 451.110, 451.220, or 451.370 shall submit a copy of the latest ratings report presenting the commercial paper or long-term credit or obligation ratings of the ARES, creditors,



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affiliates, or guarantors, as applicable, from the ratings agencies following January 1 and January 31 of each year and within 15 days after the downgrade of such ratings previously filed with the Commission to a rating below A-1 or A-, if issued from Moody's Investors Service or its successor, P-1 or A3, if issued from Moody's Investors Service or its successor, D-2 or A-, if issued from Duff & Phelps or its successor, or F-1 or A-, if issued from Fitch IBCA or its successor.

- b) An ARES that seeks to demonstrate that it maintains sufficient financial resources to provide the services for which it has received a certificate of service authority using the criteria set forth in subsection (a)(2), (a)(3), (a)(4), or (a)(5) of Section 451.110, 451.220, or 451.320 shall submit a copy of any modified, replacement or additional borrowing agreements, unconditional guarantees, lines of credit, revolving credit agreements, payment bonds, and letters of credit, as applicable, shall be submitted at least 15 days in advance of any modification, cancellation or expiration of the financial agreements.

- c) Between January 1 and January 31 of each year, an ARES that seeks to use the criteria specified in Section 451.110(a)(4), 451.220(a)(4) or 451.320(a)(4) to demonstrate that it maintains sufficient financial resources to provide the services for which it has received a certificate of service authority shall provide the peak amount of MW scheduled during the previous calendar year and the date on which that amount was scheduled. If the ARES has been serving Illinois retail customers for less than 12 months, then the ARES shall also provide an estimate of the maximum amount of MW it will schedule during the current calendar year.

- d) Between January 1 and January 31 of each year, an ARES that seeks to demonstrate that it maintains sufficient financial resources to provide single billing services under Section 451.510(a) or (b) shall submit an updated good faith estimate of the amount the ARES expects to be obliged to remit to the utility under single billing tariffs adopted pursuant to Section 16-118(b) of the Act between January 1 and January 31 of each year.

- e) An ARES that seeks to demonstrate that it maintains sufficient financial resources to provide the services for which it has received a certificate of service authority using the criteria set forth in subsection (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) of Section 451.110, 451.220, or 451.320 shall submit a copy of its certified financial statements and accountant's report, as applicable, within 120 days after the close of its fiscal year.

- f) An ARES that was granted a certificate of service authority under Section 451.220(b) or 451.320(b) shall submit an updated version of the annual financial statements and accountant's report, if available, within 120 days after the close of its fiscal year.

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(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.750 Managerial Reporting Requirements**

An ARES shall certify during January of each year that it continues to maintain the required managerial qualifications for the service authority granted in its certificate. An ARES that meets the managerial qualifications requirements by entering into one or more contracts with others to provide the required services must identify each agent or contractor on whom the ARES relies to meet the requirements and the term of each contract, and must certify that the agent or contractor will comply with all Sections of this Part applicable to the function or functions to be performed by the respective agent or contractor.

(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.760 Technical Reporting Requirements**

An ARES shall certify during January of each year that it continues to maintain the required technical qualifications for the service authority granted in its certificate. An ARES that meets the technical qualifications requirements by entering into one or more contracts with others to provide the required services must identify each agent or contractor on whom the ARES relies to meet the requirements and the term of each contract, and must certify that the agent or contractor will comply with all Sections of this Part applicable to the function or functions to be performed by the respective agent or contractor.

(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 451.770 Kilowatt-hour Reporting Requirement**

No later than March 1 of every year, each ARES shall file with the Chief Clerk of the Commission, and provide to the Energy Division or its successor, a report stating the total annual kilowatt-hours delivered and sold to retail customers within each utility service territory in the preceding calendar year.

(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Crow, Woodcock, Snipe, Rail and Teal Hunting
- 2) Code Citation: 17 Ill. Adm. Code 740
- 3) Section Numbers: 740.20  
Proposed Action:  
Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 1.2, 1.3, 1.4, 2.1, 2.2, 2.18, 2.26, 2.33 and 3.5 of the Wildlife Code [520 ILCS 5/1.2, 1.3, 1.4, 2.2, 2.18, 2.26, 2.33 and 3.5] and Migratory Bird Hunting (50 CFR 20, August 25, 1987).
- 5) A Complete Description of the Subjects and Issues Involved: This Part is being amended to add Stielbeck Forest Natural Area, update the name of Site M to Jim Edgar Panther Creek State Fish and Wildlife Area and update site specific regulations at Carlyle Lake Wildlife Management Area, Coffeen Lake State Fish and Wildlife Area and Union County Conservation Area.
- 6) Will this amendment replace any emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice to:
- Jack Price  
Department of Natural Resources  
524 S. Second Street  
Springfield, IL 62701-1787  
217/782-1809
- 12) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance:

## DEPARTMENT OF NATURAL RESOURCES

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None

- C) Types of professional skills necessary for compliance: None

- 13) Regulatory Agenda on which this rule was summarized: January 2000

The full text of the Proposed Amendments begins on the next page:

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## NOTICE OF PROPOSED AMENDMENTS

TITLE 17: CONSERVATION  
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES  
SUBCHAPTER b: FISH AND WILDLIFE

## PART 740

## CROW, WOODCOCK, SNIPES, RAIL AND TEAL HUNTING

## Section

## 740.10 Statewide Regulations

## 740.20 Regulations at Various Department-Owned or -Managed Sites

AUTHORITY: Implementing and authorized by Sections 1.2, 1.3, 1.4, 2.1, 2.2, 2.18, 2.26, 2.33 and 3.5 of the Wildlife Code 1520 ICS 5/1.2, 1.3, 1.4, 2.1, 2.2, 2.18, 2.26, 2.33 and 3.5) and Migratory Bird Hunting (50 CFR 20, August 25, 1987).

SOURCE: Adopted at 5 Ill. Reg. 8896, effective August 25, 1981; codified at 5 Ill. Reg. 10645; amended at 6 Ill. Reg. 357, effective December 23, 1981; amended at 6 Ill. Reg. 9648, effective July 21, 1982; amended at 7 Ill. Reg. 8815, effective July 15, 1983; amended at 8 Ill. Reg. 16796, effective August 30, 1984; amended at 9 Ill. Reg. 11620, effective July 16, 1985; peremptory amendments at 9 Ill. Reg. 14383, effective September 5, 1985; amended at 10 Ill. Reg. 15607, effective September 16, 1986; amended at 11 Ill. Reg. 9575, effective May 5, 1987; emergency amendments at 11 Ill. Reg. 15253, effective August 28, 1987, for a maximum of 150 days; emergency expired on January 25, 1988; amended at 12 Ill. Reg. 12261, effective July 15, 1988; amended at 13 Ill. Reg. 12869, effective July 21, 1989; amended at 14 Ill. Reg. 11207, effective June 29, 1990; amended at 15 Ill. Reg. 10057, effective June 24, 1991; amended at 16 Ill. Reg. 11162, effective June 30, 1992; amended at 17 Ill. Reg. 10877, effective July 1, 1993; amended at 18 Ill. Reg. 9998, effective June 21, 1994; amended at 19 Ill. Reg. 10577, effective July 1, 1995; amended at 20 Ill. Reg. 10851, effective August 5, 1996; amended at 21 Ill. Reg. 9061, effective June 26, 1997; amended at 22 Ill. Reg. 14782, effective August 3, 1998; amended at 23 Ill. Reg. 9033, effective July 28, 1999; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 740.20 Regulations at Various Department-Owned or -Managed Sites

- a) All the rules in 17 Ill. Adm. Code 510 apply in this Section, unless this Section is more restrictive.
- b) Woodcock, snipe and rail hunting; statewide regulations as provided for in this Part shall apply at the following areas (exceptions are in parentheses):

Anderson Lake Conservation Area (closed 7 days before duck season)

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## DEPARTMENT OF NATURAL RESOURCES

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## Big Bend State Fish and Wildlife Area

## Big River State Forest

## Cache River State Natural Area

## Campbell Pond Wildlife Management Area

## Carlyle Lake Lands and Waters - Corps of Engineers managed lands

## Carlyle Lake Wildlife Management Area (sub-impoundment area closes 7 days prior to the southern zone waterfowl season)

## Crawford County Conservation Area

## Cypress Pond State Natural Area

## Dog Island Wildlife Management Area

## Eldon Hazlet State Park (North of Allen Branch and west of Peppenhorst Branch only)

## Ferne Clyffe State Park

## Ft. de Chartres Historic Site (hunting with muzzle loading shotgun only)

## Ft. Massac State Park

## Giant City State Park

## Hamilton County Conservation Area (statewide hours until rabbit season, then 8:00 a.m. to 4:00 p.m.)

## Horseshoe Lake Conservation Area (public hunting area except controlled goose hunting area)

## I-24 Wildlife Management Area

## Iroquois County Wildlife Management Area (season closes the day before permit pheasant season; 4:00 p.m. daily closing; sign in/out required)

## Jubilee College State Park (season coincides with Jubilee Upland season, 17 Ill. Adm. Code 530.110)

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Kankakee River State Park (woodcock only; during the controlled pheasant hunting season, hunters must abide by those portions of 17 Ill. Adm. Code 530.105 and 530.110 which pertain to Kankakee River State Park)

Kaskaskia River State Fish and Wildlife Area (Doza Creek Waterfowl Management Area closed 7 days prior to waterfowl season)

Kinkaid Lake Fish and Wildlife Area

Marseilles Wildlife Area (woodcock only; Monday - Thursday only through October)

Mermet Lake Fish and Wildlife Area

Mississippi River Fish and Waterfowl Management Area (Pools 25 and 26)

Mississippi River Pools 16, 17, and 18

Mississippi River Pools 21, 22 and 24

Oakford Conservation Area

Panther Creek Conservation Area

Peabody River King State Fish and Wildlife Area (West subunit only; woodcock only)

Pyramid State Park

Ramsey Lake State Park (statewide hours until rabbit season begins; then 8:00 a.m. - 4:00 p.m.)

Randolph County Conservation Area (woodcock only)

Ray Norbut State Fish and Wildlife Area (all hunting closes December 15 in Eagle Creek Roost Area)

Red Hills State Park (statewide hours until rabbit season, then 8:00 a.m. - 4:00 p.m.)

Rend Lake Project Lands and Waters

Rice Lake Wildlife Area (season open during teal season only;

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sunrise until 1:00 p.m.)

Saline County Fish and Wildlife Area

Sam Dale Lake Conservation Area (statewide hours until rabbit season, then 8:00 a.m. to 4:00 p.m.)

Sam Parr State Park (statewide hours until rabbit season, then 8:00 a.m. to 4:00 p.m.)

Sand Ridge State Forest (During the controlled pheasant hunting season, hunters must abide by those portions of 17 Ill. Adm. Code 530.105 and 530.110 which pertain to Sand Ridge State Forest)

Siebeck Forest Natural Area

Snake Den Hollow Fish and Wildlife Area/Victoria Pheasant Habitat Area (closes September 30)

Stephen A. Forbes State Park (statewide hours until rabbit season, then 8:00 a.m. to 4:00 p.m.)

Tapley Woods State Natural Area (closed during firearm deer season)

Trail of Tears State Forest

Turkey Bluffs Fish and Wildlife Area

Union County Conservation Area (Firing Line Management Area only)

Washington County Conservation Area (woodcock only)

Weinberg-King State Park

Wildcat Hollow State Forest

c) Woodcock, snipe and rail hunting permitted, exceptions as noted in parentheses. Hunters must obtain a permit from site office and permit must be in possession while hunting. Failure to report harvest by February 15 will result in loss of hunting privileges at that site for the following year.

Chauncey Marsh

Clinton Lake State Recreation Area (4:00 p.m. daily closing)

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East Conant Field (open only to hunters possessing a valid quality upland permit for the area)

Fox Ridge State Park (woodcock only; 4:00 p.m. daily closing)

Harry "Babe" Woodyard State Natural Area (woodcock only; closes October 31)

Hidden Springs State Forest (4:00 p.m. daily closing)

Jim Edgar Panther Creek State Fish and Wildlife Area (hunters are restricted to the Open Unit portion of the site during the controlled pheasant season, except those hunters who possess a valid Quality Unit upland permit)

Kickapoo State Park (woodcock only; 4:00 p.m. daily closing; closed during firearm deer season)

Lake Shelbyville - Eagle Creek State Park (woodcock only; 4:00 p.m. daily closing; closes opening day of site's pheasant season)

Lake Shelbyville - Kaskaskia and West Okaw Wildlife Management Area (4:00 p.m. daily closing)

Middle Fork Fish and Wildlife Area (woodcock only; 4:00 p.m. daily closing; closed during firearm deer season)

Moraine View State Park (woodcock only; 4:00 p.m. daily closing; season closes the day before site's controlled pheasant season)

Newton Lake Fish and Wildlife Area (woodcock only; closed during firearm deer season)

Sanganois State Fish and Wildlife Area

Sato Field (open only to hunters possessing a valid quality upland permit for the area)

Site--M--(hunters are restricted to the Open Unit portion of the site during the controlled pheasant season, except those hunters who possess a valid quality unit upland permit)

Ten Mile Creek Fish and Wildlife Area (non-toxic shot only for woodcock hunting in waterfowl rest areas)

d) Teal hunting; statewide regulations as provided for in this Part shall

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apply on the following sites, except no permanent blinds allowed except as authorized in 17 Ill. Adm. Code 590.15, 590.20, 590.40 and 590.50 (exceptions are in parentheses):

Anderson Lake Conservation Area

Blanding Wildlife Area

Cache River State Natural Area

Campbell Pond Wildlife Management Area

Carlyle Lake Lands and Waters - Corps of Engineers managed lands (waters of Peppenhorst Branch and Allen Branch north of the buoys only)

Carlyle Lake Wildlife Management Area (teal hunting prohibited east of Kaskaskia River from the Cox's Bridge Access north to IDNR property boundary)

Chain O'Lakes State Park (hunting is allowed only from numbered blind sites; the blinds need not be completed)

Chauncey Marsh (permit required)

Coffeen Lake State Fish and Wildlife Area (hunters must sign in Prior to hunting and sign out reporting harvest at the end of each day; obtain free permit from site office prior to hunting; hunters must return the permit and report harvest by February 15 of the following year or hunting privileges for the following season will be forfeited; hunting from staked sites only; no permanent blinds; hunting by boat access only; no cutting vegetation on site; hunting north of railroad tracks only; hunting hours from legal opening to 9 a.m.; fishing allowed between the railroad tracks and the county road after 10 a.m.; four hunters per blind site; all hunters must be checked out at sign-in box by 10 a.m.)

Des Plaines Conservation Area (hunting is allowed only from numbered blind sites; the blinds need not be completed)

Dog Island Wildlife Management Area

Ft. de Chartres Historic Site (hunting is allowed from anchored, portable boat blinds only)

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Horseshoe Lake State Park (Madison County) (hunting is allowed only from numbered blind sites; blind builders must claim their blinds 1/2 hour before shooting time each day or blind is open to the public; blinds need not be completed)

Horseshoe Lake Conservation Area - Public Hunting Area (Alexander County)

Kaskaskia River State Fish and Wildlife Area

Kidd Lake State Natural Area (hunters must check in and out and report harvest each day; hunter quota filled on a first come-first served basis; cutting of vegetation is prohibited)

Lake Shelbyville - Kaskaskia and West Okaw Wildlife Management Areas (site permit described in subsection (c) applies)

Lake Shelbyville - Corps of Engineers Managed Lands and Waters

Lake Sinissippi Conservation Area

Marshall State Fish and Wildlife Area - all management units

Mississippi River Fish and Waterfowl Management Area (Mississippi River Pools 25 and 26) (blind builders must claim their blinds one-half hour before shooting time or the blind is open for that day's hunt)

Mississippi River Pools 16, 17 and 18

Mississippi River Pools 21, 22 and 24

Okford Conservation Area

Ray Norbut Fish and Wildlife Area

Rend Lake Project Lands and Waters

Rice Lake Fish and Wildlife Area (check in and check out required; sunrise until 1:00 p.m.)

Saline County Fish and Wildlife Area

Sanganois State Fish and Wildlife Area (permit required)

Snake Den Hollow Fish and Wildlife Area/Victoria Pheasant Habitat

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## Area

Stephen A. Forbes State Park (walk-in hunting in the subinboundment only)

Ten Mile Creek State Fish and Wildlife Area (permit required)

Turkey Bluffs State Fish and Wildlife Area

Union County Conservation Area (public hunting area and firing line unit only)

Woodford Fish and Wildlife Area

## e) Crow Hunting

1) Statewide regulations as provided for in this Part shall apply at the following sites (season dates in parentheses):

Mississippi River Pools 16, 17, 18

Panther Creek Conservation Area

Ray Norbut Fish and Wildlife Area

Sanganois State Fish and Wildlife Area (July 1 through August 15; day after goose season closes through March 1; non-toxic shot only; permit required)

2) Statewide regulations as provided for in this Part shall apply except hunting is permitted only during the second portion of the season at the following sites (season dates in parentheses):

Anderson Lake Conservation Area

Big Bend State Fish and Wildlife Area

Big River State Forest

Green River State Wildlife Area (January 1 - statewide closing)

3) All hunters must make a reasonable effort to retrieve downed birds. All crows must be removed from the site by the hunter.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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1) Heading of the Part: Muskrat, Mink, Raccoon, Opossum, Striped Skunk, Weasel, Red Fox, Gray Fox, Coyote, Badger, Beaver and Woodchuck (Groundhog) Trapping

B) Reporting, bookkeeping or other procedures required for compliance:  
None

2) Code Citation: 17 Ill. Adm. Code 570

C) Types of professional skills necessary for compliance: None

3) Section Numbers:  
570.40 Proposed Action:  
Amendment  
570.30 Amendment  
570.40 Amendment

13) Regulatory Agenda on which this rule was summarized: January 2000

4) Statutory Authority: Implementing and authorized by Sections 1.2, 1.3, 2.30, 2.33 and 3.5 of the Wildlife Code [520 ILCS 5/1.2, 1.3, 2.30, 2.33 and 3.5].

The full text of the Proposed Amendments begins on the next page:

5) A Complete Description of the Subjects and Issues Involved: This Part is being amended to extend the trapping seasons for raccoon, opossum, red fox, gray fox, coyote, and badger and add new sites and site specific requirements.

6) Will this rulemaking replace any emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice to:

Jack Price  
Department of Natural Resources  
524 S. Second Street  
Springfield IL 62701-1787  
217/782-1809

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

## DEPARTMENT OF NATURAL RESOURCES

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TITLE 17: CONSERVATION  
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES  
SUBCHAPTER b: FISH AND WILDLIFE

## PART 570

MUSKRAT, MINK, RACCOON, OPOSSUM, STRIPED SKUNK, WEASEL,  
RED FOX, GRAY FOX, COYOTE, BADGER, BEAVER AND WOODCHUCK (GROUNDHOG)  
TRAPPING

## Section 570.10

Statewide Zones

570.20 Statewide Season Dates

570.30 Statewide Hours, Daily Limit and Possession Limit

570.35 Use of .22 Rimfire Rifles by Trappers During Deer Gun Season

570.40 Trapping Regulations on Department-Owned, -Leased or -Managed Sites

AUTHORITY: Implementing and authorized by Sections 1.2, 1.3, 2.30, 2.33 and 3.5 of the Wildlife Code [520 ILCS 5/1.2, 1.3, 2.30, 2.33 and 3.5].

SOURCE: Adopted at 5 Ill. Reg. 9767, effective September 17, 1981; codified at 5 Ill. Reg. 10637; amended at 6 Ill. Reg. 10709, effective August 20, 1982; amended at 7 Ill. Reg. 10778, effective August 24, 1983; amended at 8 Ill. Reg. 21589, effective October 23, 1984; amended at 9 Ill. Reg. 15864, effective October 7, 1985; amended at 10 Ill. Reg. 16614, effective September 24, 1986; amended at 12 Ill. Reg. 12034, effective July 7, 1988; emergency amendments at 12 Ill. Reg. 16261, effective September 23, 1988, for a maximum of 150 days; emergency expired February 20, 1989; amended at 13 Ill. Reg. 10589, effective June 15, 1989; amended at 14 Ill. Reg. 14775, effective September 4, 1990; amended at 14 Ill. Reg. 19854, effective December 3, 1990; amended at 15 Ill. Reg. 11586, effective August 2, 1991; amended at 16 Ill. Reg. 11069, effective June 30, 1992; amended at 17 Ill. Reg. 10785, effective July 1, 1993; amended at 17 Ill. Reg. 18796, effective October 19, 1993; amended at 18 Ill. Reg. 10077, effective June 21, 1994; amended at 19 Ill. Reg. 12640, effective August 29, 1995; amended at 20 Ill. Reg. 12351, effective August 30, 1996; amended at 21 Ill. Reg. 9070, effective June 26, 1997; amended at 22 Ill. Reg. 14809, effective August 3, 1998; amended at 23 Ill. Reg. 9055, effective July 28, 1999; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

NOTE: In this part, unless the context clearly indicates otherwise, superscript numbers or letters are denoted by parentheses; subscript are denoted by brackets, and SUM means the summation series or sigma function as used in mathematics.

## Section 570.20 Statewide Season Dates

- a) Muskrat, mink, raccoon, opossum, striped skunk and weasel

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## DEPARTMENT OF NATURAL RESOURCES

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- 1) Northern Zone: November 5 through the next following January 15<sup>th</sup>.  
2) Southern Zone: November 10 through the next following January 20<sup>th</sup>.

- b) Red fox, gray fox, coyote and badger

Statewide: November 10 through the next following January 20<sup>th</sup>.

- c) Beaver

- 1) Northern Zone: November 5 through the next following March 31, except those portions of Carroll, Whiteside, and Rock Island counties lying west of Illinois Rt. 84 from Interstate 80 north to the Jo Daviess County line will be open to beaver trapping only from November 10 through the next following January 5, inclusive.

- 2) Southern Zone: November 10 through the next following March 31.  
d) Woodchuck (Groundhog)  
Northern and Southern Zones: June 1 through the next following September 30.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 570.30 Statewide Hours, Daily Limit and Possession Limit

- a) Muskrat, mink, raccoon, opossum, striped skunk and weasel  
1) Trapping hours: November 5 in the Northern Zone and November 10 in the Southern Zone open for trapping at sunrise; January 15<sup>th</sup> closed for trapping after sunset; otherwise, hours are unrestricted.

- 2) Daily and possession limit: None

- b) Red fox, gray fox and coyote

- 1) Trapping hours: November 10 open for trapping at sunrise; January 20<sup>th</sup> closed for trapping after sunset; otherwise, hours are unrestricted.

- 2) Daily and possession limit: None

- c) Beaver

- 1) Trapping hours: November 5 in the Northern Zone and November 10 in the Southern Zone open for trapping at sunrise; March 31 closed for trapping after sunset except those portions of Carroll, Whiteside and Rock Island Counties lying west of Illinois Rt. 84 from Interstate 80 north to the Jo Daviess County line, are closed for trapping January 10 after sunset; otherwise, hours are unrestricted.

- 2) Daily and possession limit: None

- d) Woodchuck (groundhog)

- 1) Trapping hours: June 1 open for trapping at sunrise; September 30 closed for trapping after sunset; otherwise hours are

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following sites (exceptions in parentheses):

Blanding Wildlife Area (trapping area includes the islands and associated backwater sloughs immediately upstream from Lock and Dam 12; no trapping on mainland)

Kinkaid Lake Fish and Wildlife Area

Mississippi River Pools 16, 17, 18, 21, 22, 24

Pyramid State Park (water sets only)

Ray Norbut State Fish and Wildlife Area (all trapping closes December 15 in Eagle Roost Area)

Rend Lake Project Lands and Waters (water sets only)

Sielbeck Forest Natural Area (water sets only)

Siloam Springs State Park

c) Statewide regulations as provided for in this Part apply at the following sites; in addition, a permit is required; only Egg Traps (Registered Trademark), D-P (Dog-Proof) Traps (Registered Trademark), box traps, cage traps, and traps of similar design may be used for land sets (exceptions in parentheses):

Cache River State Natural Area

Carlyle Lake Lands and Waters - Corps of Engineers Managed Lands

Carlyle Lake Wildlife Management Area

Clinton Lake Recreation Area

Coffeen Lake State Fish and Wildlife Area

Cypress Pond State Natural Area

Dog Island Wildlife Management Area

East Conant Field

Eldon Hazlet State Park - north of Allen Branch and west of Peppenhorst Branch only

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unrestricted.

2) Daily and possession limit: None

e) Badger

1) Trapping hours: November 10 open for trapping at sunrise; January 2045 closed for trapping at sunset; otherwise hours are unrestricted.

2) Daily and possession limit: not to exceed two badgers per season in the northern zone and one badger per season in the southern zone.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 570.40 Trapping Regulations on Department-Owned, -Leased or -Managed Sites**

a) General Regulations

1) All the regulations in 17 Ill. Adm. Code 510-General Hunting and Trapping apply in this Section, unless this Section is more restrictive.

2) On areas where special Department tags are required for trappers, traps without tags attached will be subject to confiscation.

3) Trappers must stay within assigned areas.

4) For sites where permits are required a drawing shall be held prior to the opening of the season. The date of the drawing shall be announced by the Department by public announcement and the drawing shall be held at the site. Persons participating in the drawing must have either a current or previous year trapping license. The number of permits per site shall be determined pursuant to 17 Ill. Adm. Code 510.20. Permit applicants must submit name and address to the site prior to drawing. Permits must be in possession while trapping on the area.

5) All sites except Blanding Wildlife Area, Kinkaid Lake Fish and Wildlife Area, Mississippi River Pools 16, 17, 18, 21, 22, 24, and Rend Lake Wildlife Management Area require trappers to submit a harvest report to the site superintendent within 20 days following the close of the trapping season. Failure to report shall result in the trapper being ineligible to trap at that site for the following year.

6) Body-gripping traps with a 10-inch jaw spread or larger must be totally submerged in water when set.

7) Any person who violates the site specific regulations shall be guilty of a Class B Misdemeanor.

8) No trapping is permitted in subimpoundments or designated waterfowl management units during duck season.

b) Statewide regulations as provided for in this Part apply at the

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may be used)

Sanganois Fish and Wildlife Area

Sato Field

Site--M--(only--Egg-Traps--(Registered-Trademark)--B-P--(Bog-Proof) Traps--(Registered-Trademark)--box-traps, cage-traps, and traps of similar design may be used)

Ten Mile Creek State Fish and Wildlife Area

Turkey Bluffs Fish and Wildlife Area

Washington County Conservation Area

d) Statewide regulations as provided for in this part apply at the following sites; in addition, a permit is required, only Egg Traps (Registered Trademark), D-P (Dog-Proof) Traps (Registered Trademark), box traps, cage traps, and traps of similar design may be used for land sets; only body-gripping traps with a jaw spread of 5 inches or less, foothold traps with a jaw spread of 4 1/2 inches or less and square body-gripping traps with a 10 inch jaw spread may be used for water sets (exceptions in parentheses):

Anderson Lake Conservation Area

Argyle Lake State Park

Banner Marsh State Fish and Wildlife Area

Big Bend Fish and Wildlife Area (after the close of rabbit season foothold traps with a jaw spread of 7 1/2 inches or less may be used for water sets)

Coleta Ponds

Giant City State Park

Hennepin Canal Parkway including Mississippi Lake (trappers must register at park office; no floats may be set more than 14 days prior to the season and must be removed at the conclusion of the season; no land sets)

Horseshoe Lake State Park-Wadison County

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## ILLINOIS REGISTER

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

Ferne Clyffe State Park - Cedar Draper Bluffs Hunting Area

Fort de Chartres Historic Site

Harry "Babe" Woodyard State Natural Area

Horseshoe Lake Conservation Area

I & M Canal State Park

Jim Edgar Panther Creek State Fish and Wildlife Area (only Egg Traps (Registered Trademark), D-P (Dog-Proof) Traps (Registered Trademark), box traps, cage traps, traps of similar design, and homemade dog-proof traps: homemade dog-proof traps must be designed with a leg hold trap no larger than a number two size in an enclosed wood, metal or durable plastic container with a single access opening of no larger than 1 1/2 inch diameter)

Kaskaskia River Fish and Wildlife Area (Doza Creek Waterfowl Management Area closed 7 days prior to duck season)

Kidd Lake State Natural Area

Lake Murphysboro State Park

Lake Shelbyville West Okaw and Kaskaskia Fish and Wildlife Area

Mernmet Lake Fish and Wildlife Area

Mississippi River Fish and Waterfowl Area (Pools 25, 26) (land sets accessed by land only allowed during duck season; water sets allowed after duck season closes)

Moraine Hills State Park (water sets only; only body-gripping traps with a jaw spread of 5 inches or less may be used; no more than two persons may enter drawing on a single card)

Panther Creek Conservation Area

Peabody River King Fish and Wildlife Area (east, west, and south subunits only)

Randolph County Conservation Area

Redwing Slough/Deer Lake State Natural Area (water sets only; only body gripping traps with a jaw spread of 5-6 inches or less

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## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

Johnson-Sauk Trail State Park

Lake Le-Aqua-Na State Park

Mackinaw River State Fish and Wildlife Area (water sets only)

Marshall County Fish and Wildlife Area

Morrison Rockwood State Park

Rice Lake Fish and Wildlife Area

Rock Cut State Park

Sam Dale Lake Conservation Area

Sangchris Lake State Park

Shabbona Lake State Park

Sparland Fish and Wildlife area

Spring Lake Conservation Area (water sets only)

Starved Rock/Mathiessen State Park

Stephen A. Forbes State Park

Trail of Tears State Forest

Union County Conservation Area

- e) Trapping is prohibited on all other Department-owned owned, -leased or -managed sites except by special permit which shall be issued by the Department when it is determined that the harvest of a species would enhance the biological balance of the resource.

- 1) All regulations shall be according to species regulations as provided for in this Part.
- 2) Permit application information and site specific regulations shall be announced publicly by the Department through the news media by September 1 of each year.
- 3) Site specific regulations shall be listed on the application and permit and posted at the site.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Raccoon, Opossum, Striped Skunk, Red Fox, Gray Fox, Coyote and Woodchuck (Groundhog) Hunting

- 2) Code Citation: 17 Ill. Adm. Code 550

- 3) Section Numbers: 550.20  
550.30  
Proposed Action:  
Amendment

- 4) Statutory Authority: Implementing and authorized by Sections 1.3, 1.4, 1.13, 2.1, 2.2, 2.6, 2.7, 2.30, 3.5, 3.27, 3.28 and 3.29 of the Wildlife Code [520 ILCS 5/1.3, 1.4, 1.13, 2.1, 2.2, 2.6, 2.7, 2.30, 2.33, 3.5, 3.27, 3.28 and 3.29].

- 5) A Complete Description of the Subjects and Issues Involved: This Part is being amended to extend the hunting season for raccoon and opossum, add new sites and regulations and amend existing site specific regulations.

- 6) Will this rulemaking replace any emergency rule currently in effect? No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Do these proposed amendments contain incorporations by reference? No

- 9) Are there any other proposed amendments pending on this Part? No

- 10) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice to:

Jack Price  
Department of Natural Resources  
524 S. Second Street  
Springfield IL 62701-1787  
217/782-1809

- 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance:

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## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rule was summarized: January 2000

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 17: CONSERVATION

## CHAPTER 1: DEPARTMENT OF NATURAL RESOURCES

## SUBCHAPTER B: FISH AND WILDLIFE

## PART 550

RACCOON, OPOSSUM, STRIPED SKUNK, RED FOX, GRAY FOX, COYOTE  
AND WOODCHUCK (GROUNDHOG) HUNTING

## Section

550.10 General Regulations

550.20 Raccoon, Opossum, Striped Skunk, Red Fox, Gray Fox, Coyote and

550.30 Woodchuck (Groundhog) Hunting on Department-Owned, -Leased or -Managed Sites

AUTHORITY: Implementing and authorized by Sections 1-3, 1-4, 1-13, 2-1, 2-2, 2-6, 2-7, 2-30, 2-33, 3-5, 3-27, 3-28 and 3-29 of the Wildlife Code (520 ILCS 5/1-3, 1-4, 1-13, 2-1, 2-2, 2-6, 2-7, 2-30, 2-33, 3-5, 3-27, 3-28 and 3-29).

SOURCE: 5 Ill. Reg. 8833, effective August 25, 1981; codified at 5 Ill. Reg. 10636; emergency amendment at 5 Ill. Reg. 11593, effective October 20, 1981, for a maximum of 150 days; emergency expired March 17, 1982; amended at 6 Ill. Reg. 10714, effective August 20, 1982; amended at 7 Ill. Reg. 10782, effective August 24, 1983; amended at 7 Ill. Reg. 16098, effective November 22, 1983; amended at 8 Ill. Reg. 21593, effective October 23, 1984; amended at 9 Ill. Reg. 16204, effective October 9, 1985; emergency amendment at 9 Ill. Reg. 18151, effective November 12, 1985, for a maximum of 150 days; emergency expired April 11, 1986; amended at 10 Ill. Reg. 16649, effective September 22, 1986; amended at 11 Ill. Reg. 9540, effective May 5, 1987; amended at 12 Ill. Reg. 11730, effective June 30, 1988; amended at 13 Ill. Reg. 10598, effective June 19, 1989; amended at 14 Ill. Reg. 10798, effective June 20, 1990; amended at 15 Ill. Reg. 11598, effective August 2, 1991; amended at 16 Ill. Reg. 11078, effective June 30, 1992; amended at 17 Ill. Reg. 10795, effective July 1, 1993; amended at 18 Ill. Reg. 10090, effective June 21, 1994; amended at 19 Ill. Reg. 11787, effective August 3, 1995; amended at 20 Ill. Reg. 10874, effective August 5, 1996; amended at 21 Ill. Reg. 9077, effective June 26, 1997; amended at 22 Ill. Reg. 14836, effective August 3, 1998; amended at 23 Ill. Reg. 9066, effective July 28, 1999; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 550.20 Statewide Regulations

## a) Raccoon, Opossum

1) Zones: The State of Illinois is divided by U.S. Rt. 36 (New Rt. 36) into a Northern Zone and Southern Zone.

2) Northern Zone hunting dates: November 5 through the next



## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

- following February 10 January-25, except as noted in Section 550.10(a) of this Section above.
- 3) Southern Zone hunting dates: November 10 through the next following February 15 January-30, except as noted in Section 550.10(a) above.
  - 4) Hunting hours: November 5 in the Northern Zone and November 10 in the Southern Zone open for hunting at sunrise; during archery deer season, raccoon and opossum bow hunting hours shall coincide with the statewide archery deer hunting hours as specified in Section 2.26 of the Wildlife Code [520 ILCS 5/2.26]; otherwise, hours are unrestricted.
  - 5) Daily limit and possession limit: None.
  - b) Red fox and gray fox
    - 1) Hunting dates: November 10 through the next following January 31, except as noted in Section 550.10(a) above.
    - 2) Hunting hours: Opens November 10 for hunting at sunrise; during archery deer season, red fox and gray fox bow hunting hours shall coincide with the statewide archery deer hunting hours; otherwise, hours are unrestricted.
    - 3) Daily limit and possession limit: None.
  - c) Coyote and Striped Skunk
    - 1) Hunting dates: Year around except as noted in Section 550.10(a) above.
    - 2) Hunting hours: One-half hour before sunrise to sunset, except during the red fox and gray fox hunting season when statewide hunting hours are unrestricted, and except during archery deer season when coyote and striped skunk bow hunting hours shall coincide with the statewide archery deer hunting hours.
    - 3) Daily limit and possession limit: None.
  - d) Woodchuck (groundhog)
    - 1) Hunting dates: June 1 through the next following March 31, except as noted in Section 550.10(a) above.
    - 2) Hunting hours: Sunrise to sunset.
    - 3) Daily limit and possession limit: None.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 550.30 Raccoon, Opossum, Striped Skunk, Red Fox, Gray Fox, Coyote and Woodchuck (Groundhog) Hunting on Department-Owned, -Leased or -Managed Sites**

- a) All the regulations in 17 Ill. Adm. Code 510-General Hunting and Trapping apply in this Section, unless this Section is more restrictive.
- b) For sites where hunter quotas exist and permits are required a drawing

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

shall be held prior to the opening of the season. The date of the drawing shall be announced by the Department by public announcement and the drawing shall be held at the site. The number of permits per site shall be determined pursuant to 17 Ill. Adm. Code 510.20.

- c) .22 rimfire firearms permitted from sunset to sunrise unless otherwise specified.
- d) Coyote and striped skunk season shall coincide with the statewide fox season unless otherwise specified.
- e) No woodchuck (groundhog) hunting allowed unless otherwise specified.
- f) Statewide regulations as provided for in this rule apply at the following sites (exceptions are in parentheses):

Anderson Lake Conservation Area (all hunting to begin after the close of duck season)

Apple River Canyon State Park

Argyle Lake State Park

Banner Marsh State Fish and Wildlife Area

Big Bend State Fish and Wildlife Area

Big River State Forest

Catche River State Natural Area

Campbell Pond Wildlife Management Area

Carlyle Lake Lands and Waters - Corps of Engineers Management Lands

Carlyle Lake Wildlife Management Area (subimpoundment area closed 7 days prior to and during the southern zone waterfowl season)

Cypress Pond State Natural Area

Dog Island Wildlife Management Area

Eldon Hazlet State Park (north of Allen Branch and west of Peppenhorst Branch)

Ferne Clyffe State Park - Cedar Draper Bluffs Hunting Area

Fort de Chartres Historic Site (muzzleloading firearms or bow and arrow only)

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

Horseshoe Lake Conservation Area - Alexander County (Public Hunting Area except Controlled Hunting Area)

## 1-24 Wildlife Management Area

Johnson Sauk Trail State Park (archery only; coyote and fox only; season shall coincide with archery deer season on this site)

Kaskaskia River State Fish and Wildlife Area (Doza Creek Waterfowl Management Area closed 7 days prior to and during duck season)

## Kinkaid Lake Fish and Wildlife Area

Marseilles Wildlife Area (coyote and fox only; fox statewide season or closes first Thursday after January 10, whichever comes first; coyote open concurrent with fox season; hunting hours are one half hour before sunrise until sunset; ~~coyote opens with fox season--February--20;---hunting---hours---1/2---hour---before sunrise---sunset~~)

Marshall County Fish and Wildlife Area (raccoon, opossum only; season opens day after duck season)

Mississippi River Fish and Waterfowl Management Area (Pools 25 and 26)

Mississippi River Pools 16, 17, 18, 21, 22 and 24 (groundhog hunting allowed) (c)

## Oakford Conservation Area

Panther Creek Conservation Area (statewide seasons for coyote and striped skunk)

Peabody River King State Fish and Wildlife Area (West subunit only)

## Randolph County Conservation Area

Ray Norbut State Fish and Wildlife Area (all hunting closes December 15 in Eagle Roost Area)

## Rend Lake Project Lands and Waters

## Sangamon County Conservation Area

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## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

Shawnee National Forest, Oakwood Bottoms and LaRue Scatters (season closes 7 days before opening of duck season and remains closed through the duck season; at Oakwood Bottoms non-toxic shot only)

## Sielbeck Forest Natural Area

## Siloam Springs State Park

Tapley Woods State Natural Area (shotguns or muzzleloading rifles only may be used from sunset - sunrise)

## Trail of Tears State Forest

## Turkey Bluffs State Fish and Wildlife Area

## Washington County Conservation Area

## Weinburg-King State Park (c)(d)

## Wildcat Hollow State Forest

Witkowsky State Wildlife Area (coyote only; season shall coincide with archery and firearm deer season at this site; archery only during the archery season at this site)

Woodford County Fish and Wildlife Area (raccoon, opossum only; season opens after duck season)

g) Statewide regulations apply except that hunters must obtain a permit from the Department; where hunter quotas exist, permits are allocated as described in subsection (b); permits must be in possession while hunting; the permit must be returned by February 15 or hunter will forfeit hunting privileges at that site the following year (exceptions are in parentheses):

Chauncey Marsh (obtain permit at Red Hills State Park Headquarters)

## Clinton Lake State Recreation Area

Coffeen Lake State Fish and Wildlife Area (coyote only, shotgun only)

## Crawford County Conservation Area

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## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

## Sam Parr State Park

Sand Ridge State Forest (coyote and striped skunk seasons - opening of the statewide racoon season until the day before opening of the statewide spring turkey season)

Sanganois State Fish and Wildlife Area (statewide seasons for coyote and striped skunk)

Sangchris Lake State Park (fox, coyote and striped skunk hunting only; statewide seasons for fox, coyote and striped skunk except during central zone duck and Canada goose season, waterfowl season-only hunters pursuing waterfowl or upland game may take fox, coyote and striped skunk with shotgun only in accordance with site-specific regulations set forth in 17 Ill. Adm. Code 530 and 590 may take-fox, coyote and skunk-shotgun-only)

## Sato Field

Site-M-(statewide-seasons-for-coyote-and-striped-skunk)

## Stephen A. Forbes State Park

Ten Mile Creek State Fish and Wildlife Area (statewide coyote, striped skunk, and groundhog hunting allowed)

Walnut Point Fish and Wildlife Management Area (season opens day after second firearm deer season; closes December 20; hunting sunset to sunrise only; racoon only)

Wolf Creek State Park (season opens day after second firearm deer season; closes December 20; hunting sunset to sunrise only; racoon only)

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

Eagle Creek State Park (season opens day after second firearm deer season; closes December 20; hunting sunset to sunrise only; racoon only)

## East Conant Field

## Fox Ridge State Park

Green River State Wildlife Area (fox, striped skunk and coyote open January 1; skunk and coyote close the last day of February)

## Hamilton County Conservation Area

## Harry "Babe" Woodyard State Natural Area

## Hidden Springs State Forest

Iroquois County Wildlife Management Area (season opens the day after Permit Pheasant Season)

Jim Edgar Panther Creek State Fish and Wildlife Area (statewide seasons for coyote and striped skunk)

Kankakee River State Park (no rifle or handgun hunting allowed; the furbearer hunting season opens the day after the last day of the site's upland hunting seasons through statewide close of respective seasons for furbearers except striped skunk and coyote close with fox season)

## Kickapoo State Park

Lake Shelbyville - Kaskaskia and West Okaw Wildlife Management Areas

Lincoln Trail State Park (season opens day after second firearm deer season; closes December 20; hunting hours sunset to sunrise only; racoon only)

## Middle Fork Fish and Wildlife Management Area

Moraine View State Park (season opens after site's controlled pheasant season; night hunting only)

## Ramsey Lake State Park

## Saline County Fish and Wildlife Area

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## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Squirrel Hunting2) Code Citation: 17 Ill. Adm. Code 6903) Section Numbers:  
690.30  
Proposed Action:  
Amendment4) Statutory Authority: Implementing and authorized by Sections 1.2, 1.3, 1.4, 2.1, 2.2, 2.28 and 3.5 of the Wildlife Code (520 ILCS 5/1.2, 1.3, 1.4, 2.1, 2.2, 2.28 and 3.5).5) A Complete Description of the Subjects and Issues Involved: This Part is being amended to add Sahara Woods, Momence Wetlands and Stielbeck Forest Natural Area and to change the name of Site M to Jim Edgar Panther Creek State Fish and Wildlife Area.6) Will this amendment replace any emergency rule currently in effect? No7) Does this rulemaking contain an automatic repeal date? No8) Do these proposed amendments contain incorporations by reference? No9) Are there any other proposed amendments pending on this Part? No10) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice to:

Jack Price  
Department of Natural Resources  
524 S. Second Street  
Springfield IL 62701-1787  
217/782-1809

12) Initial Regulatory Flexibility Analysis:A) Types of small businesses, small municipalities and not for profit corporations affected: NoneB) Reporting, bookkeeping or other procedures required for compliance:  
None

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

C) Types of professional skills necessary for compliance: None13) Regulatory Agenda on which this rule was summarized: January 2000The full text of the Proposed Amendments begins on the next page:



## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

TITLE 17: CONSERVATION  
 CHAPTER 1: DEPARTMENT OF NATURAL RESOURCES  
 SUBCHAPTER b: FISH AND WILDLIFE

PART 690  
 SQUIRREL HUNTING

## Section

690.10 Hunting Seasons

690.20 Statewide Regulations

690.30 Regulations at Various Department-Owned or -Managed Sites

**AUTHORITY:** Implementing and authorized by Sections 1.2, 1.3, 1.4, 2.1, 2.2, 2.28 and 3.5 of the Wildlife Code [520 ILCS 5/1.2, 1.3, 1.4, 2.1, 2.2, 2.28 and 3.5].

**SOURCE:** Adopted at 5 Ill. Reg. 8017, effective July 24, 1981; codified at 5 Ill. Reg. 10642; emergency amendment at 5 Ill. Reg. 11382, effective October 14, 1981, for a maximum of 150 days; emergency expired March 12, 1982; amended at 6 Ill. Reg. 9642, effective July 21, 1982; amended at 7 Ill. Reg. 8809, effective July 15, 1983; emergency amendment at 7 Ill. Reg. 9690, effective August 1, 1983, for a maximum of 150 days; emergency expired December 29, 1983; amended at 8 Ill. Reg. 16789, effective August 30, 1984; amended at 9 Ill. Reg. 11614, effective July 16, 1985; amended at 10 Ill. Reg. 15601, effective September 16, 1986; amended at 11 Ill. Reg. 9549, effective May 5, 1987; amended at 12 Ill. Reg. 12246, effective July 15, 1988; amended at 13 Ill. Reg. 10606, effective June 15, 1989; amended at 14 Ill. Reg. 10816, effective June 20, 1990; amended at 15 Ill. Reg. 10012, effective June 24, 1991; amended at 16 Ill. Reg. 11087, effective June 30, 1992; amended at 17 Ill. Reg. 10844, effective July 1, 1993; amended at 18 Ill. Reg. 8624, effective May 31, 1994; amended at 19 Ill. Reg. 10664, effective July 1, 1995; amended at 20 Ill. Reg. 10882, effective August 5, 1996; amended at 21 Ill. Reg. 9095, effective June 26, 1997; amended at 22 Ill. Reg. 14844, effective August 3, 1998; amended at 23 Ill. Reg. 9074, effective July 26, 1999; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 690.30 Regulations at Various Department-Owned or -Managed Sites**

- a) All the regulations in 17 Ill. Adm. Code 510, General Hunting and Trapping on Department-Owned or Managed Sites, apply in this Part, unless this Part is more restrictive.
- b) Hunting with .22 caliber rimfire firearms or muzzleloading black powder rifles is allowed at those sites listed in the following subsections that are followed by a (1).
- c) Check-in, check-out and reporting of harvest is required at those sites listed in the following subsections that are followed by a (2).

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## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

## d) Statewide regulations apply at the following sites:

Anderson Lake Conservation Area (2)

Apple River Canyon State Park - Salem and Thompson Units (2)

Argyle Lake State Park (2)

Big Bend State Fish and Wildlife Area (2)

Big River State Forest (2)

Cache River State Natural Area (1) (2)

Campbell Pond Wildlife Management Area

Carlyle Lake Lands and Waters - Corps of Engineers managed lands (1)

Carlyle Lake Wildlife Management Area (subimpoundment area closed 7 days prior to and during the southern zone waterfowl season) (1)

Chain O'Lakes State Park (opens Wednesday after permit pheasant season for 5 consecutive days, except closed on Christmas Day; 8:00 a.m. to 4:00 p.m.; daily quota filled on first come-first served basis; DNR issued back patch must be worn while hunting; only shot size of No. 5 lead or No. 3 steel or smaller may be used) (2)

Crawford County Conservation Area (1) (2)

Cypress Pond State Natural Area (1) (2)

Dog Island Wildlife Management Area (1) (2)

Eldon Hazlet State Park (north of Allen Branch (2); and west of Peppermoor Branch only)

Ferne Clyffe State Park - Cedar Draper Bluffs Hunting Area (1) (2)

Fort de Chartres Historic Site (muzzleloading firearms or bow and arrow only) (1) (2)

Fort Massac State Park (2)

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## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

## 1-24 Wildlife Management Area (2)

Kaskaskia River State Fish and Wildlife Area (Doza Creek Waterfowl Management Area closed 7 days prior to and during duck season) (1) (2)

## Kinkaid Lake Fish and Wildlife Area (1)

Lowden-Miller State Forest (hunting allowed from September 1 through September 30 only; hunting allowed only on the southern one-half of the site) (1) (2)

Marseilles Fish and Wildlife Area (Monday through Thursday only through October 31; during August, hunting allowed west of E. 2450 Road only) (2)

## Marshall State Fish and Wildlife Area (2)

Mernett Lake Conservation Area (non-toxic shot only in waterfowl areas) (1) (2)

Mississippi River Fish and Waterfowl Management Area (Pools 25 and 26) (1)

Mississippi River Pools 16, 17, 18 (1)

Mississippi River Pools 21, 22, 24 (1)

Morrison Rockwood State Park (opens November 1 and closes the Thursday before the first statewide firearm deer season) (1) (2)

## Oakford Conservation Area (1)

## Panther Creek Conservation Area (1) (2)

Peabody River King State Fish and Wildlife Area (east and north subunits close, November 1) (2)

## Randolph County Conservation Area (2)

Ray Norbut State Fish and Wildlife Area ( closes December 15 in Eagle Roost Area) (1) (2)

## Red Hills State Park (2)

## Rend Lake Project Lands and Waters (1)

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## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

Sahara Woods (1) (2)

Saline County Fish and Wildlife Area (1) (2)

Sam Dale Lake Conservation Area (2)

Sam Parr State Park (2)

Sangamon County Conservation Area (1)

Shawnee National Forest, Oakwood Bottoms (non-toxic shot only) (1)

Sielbeck Forest Natural Area (1) (2)

Stephen A. Forbes State Park (2)

Tapley Woods State Natural Area (2)

Trail of Tears State Forest (1)

Turkey Bluffs State Fish and Wildlife Area (1) (2)

Wainut Point Fish and Wildlife Area (2)

Washington County Conservation Area (2)

Weinberg-King State Park (1) (2)

Wildcat Hollow State Forest (1)

Witkovsky State Wildlife Area (opens after second firearm deer season) (2)

e) Season dates shall be the day following Labor Day to the end of the statewide season at the following sites:

Ferne Clyffe State Park - Fern Clyffe Hunting Area (2)

Giant City State Park

Hamilton County Conservation Area (2)

Pere Marquette State Park (2)

Pyramid State Park (2)

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DEPARTMENT OF NATURAL RESOURCES  
NOTICE OF PROPOSED AMENDMENTS

Siloam Springs State Park (2)

f) Season dates shall be the day after Labor Day to September 30 at the following sites:

Johnson-Sauk Trail State Park (2)

Jubilee College State Park (2)

Kankakee River State Park (2)

Silver Springs State Park (2)

Spring Lake Fish and Wildlife Area (2)

g) Statewide regulations apply at the following sites, except that hunters must obtain a free permit from the Department and variations in season dates are in parentheses. Permits must be in possession while hunting. The permit must be returned and harvest reported by February 15 or the hunter will forfeit privileges at that site for the following year:

Chauncey Marsh (permit may be obtained at Red Hills State Park Headquarters) (1)

Clinton Lake State Recreation Area

Coffeen Lake State Fish and Wildlife Area (area closed during firearm deer season; closes September 30)

East Conant Field (1)

Fox Ridge State Park (1)

Harry "Babe" Woodyard State Natural Area

Hidden Springs State Forest (.22 rimfire firearms and muzzleloading blackpowder rifles prohibited until October 1) (1)

Hurricane Creek Habitat Area (season closes October 31)

Jim Edgar Panther Creek State Fish and Wildlife Area (the Quality Unit and Controlled Unit close October 31) (1)

Kickapoo State Park (season opens day after Labor Day)

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DEPARTMENT OF NATURAL RESOURCES  
NOTICE OF PROPOSED AMENDMENTS

Lake Shelbyville - Eagle Creek State Park (closes opening day of site's pheasant season)

Lake Shelbyville - Kaskaskia and West Okaw Wildlife Management Areas (1)

Middle Fork Fish and Wildlife Area (season opens day after Labor Day)

Momence Wetlands (season opens day after Labor Day; closes September 30; shotgun only, non-toxic shot only)

Moraine View State Park

Newton Lake Fish and Wildlife Area (closes September 30)

Ramsey Lake State Park

Sanganois State Fish and Wildlife Area (1)

Sato Field (1)

State--M--(the--Quality Unit and Controlled Unit--close--October--31--)

Ten Mile Creek Fish and Wildlife Area (1)

h) Season dates shall be statewide opening through September 30 at the following sites:

Castle Rock State Park (2)

Coffeen Lake State Fish and Wildlife Area

Iroquois County Wildlife Management Area (1) (2)

Mackinaw State Fish and Wildlife Area (2)

Mt. Vernon Game Propagation Center (2)

Woodford County Fish and Wildlife Area (2)

i) Season dates shall be statewide opening through October 31 at the following sites:

Green River State Wildlife Area (2)

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## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

Horseshoe Lake Conservation Area (season on the controlled goose hunting area shall close October 31, remainder of the public hunting area statewide season; non-toxic shot only) (1)

Sand Ridge State Forest (1) (2)

Union County Conservation Area (season on the controlled goose hunting area closes October 31; firing line unit - statewide closing; non-toxic shot only) (1)

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: White-Tailed Deer Hunting by Use of Firearms

2) Code Citation: 17 Ill. Adm. Code 650

3) Section Numbers: 650.67  
Proposed Action: Amendment

4) Statutory Authority: Implementing and authorized by Sections 1.3, 1.4, 1.13, 2.24, 2.25, 2.26 and 3.36 of the Wildlife Code [520 ILCS 5/1.3, 1.4, 1.13, 2.24, 2.25, 2.26 and 3.36].

5) A Complete Description of the Subjects and Issues Involved: Amendments to this Part add Starved Rock State Park to the list of special hunts for disabled hunters.

6) Will this rulemaking replace any emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
650.20	Amendment	24 Ill. Reg. 456, 1/14/00
650.21	Amendment	24 Ill. Reg. 456, 1/14/00
650.22	Amendment	24 Ill. Reg. 456, 1/14/00
650.60	Amendment	24 Ill. Reg. 456, 1/14/00
650.65	Amendment	24 Ill. Reg. 456, 1/14/00

10) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice to:

Jack Price  
Department of Natural Resources  
524 S. Second Street  
Springfield IL 62701-1787  
217/782-1809

12) Initial Regulatory Flexibility Analysis:



## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

A) Types of small businesses, small municipalities and not for profit corporations affected: There is no effect on small businesses, small municipalities and not for profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory agenda on which this rule was summarized: This rule was not included on either of the 2 most recent agendas because: The Department neglected to file a regulatory agenda on this Part.

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

TITLE 17: CONSERVATION  
CHAPTER 1: DEPARTMENT OF NATURAL RESOURCES  
SUBCHAPTER b: FISH AND WILDLIFE

PART 650  
WHITE-TAILED DEER HUNTING BY USE OF FIREARMS

## Section

650.20	Statewide Deer Permit Requirements
650.21	Deer Permit Requirements - Landowner/Tenant Permits
650.22	Deer Permit Requirements - Special Hunts
650.23	Deer Permit Requirements - Group Hunt
650.30	Statewide Firearms Requirements
650.40	Statewide Deer Hunting Rules
650.50	Rejection of Application/Revocation of Permits
650.60	Regulations at Various Department-Owned or -Managed Sites
650.65	Youth Hunt
650.67	Special Hunts for Disabled Hunters
650.70	Special Extended Season Firearm Deer Hunt (Repealed)

AUTHORITY: Implementing and authorized by Sections 1.3, 1.4, 1.13, 2.24, 2.25, 2.26 and 3.36 of the Wildlife Code [520 ILCS 5/1.3, 1.4, 1.13, 2.24, 2.25, 2.26 and 3.36].

SOURCE: Adopted at 5 Ill. Reg. 9771, effective September 17, 1981; codified at 5 Ill. Reg. 10640; amended at 6 Ill. Reg. 10730, effective August 20, 1982; amended at 7 Ill. Reg. 10798, effective August 24, 1983; amended at 8 Ill. Reg. 21602, effective October 23, 1984; amended at 9 Ill. Reg. 16213, effective October 10, 1985; emergency amendment at 9 Ill. Reg. 20922, effective December 18, 1985; for a maximum of 150 days; amended at 10 Ill. Reg. 4223, effective February 25, 1986; amended at 10 Ill. Reg. 16665, effective September 22, 1986; amended at 11 Ill. Reg. 3044, effective February 3, 1987; amended at 11 Ill. Reg. 9564, effective May 5, 1987; amended at 12 Ill. Reg. 8003, effective April 25, 1988; amended at 12 Ill. Reg. 12055, effective July 11, 1988; amended at 13 Ill. Reg. 12853, effective July 21, 1989; amended at 14 Ill. Reg. 12430, effective July 20, 1990; amended at 14 Ill. Reg. 19869, effective December 3, 1990; amended at 15 Ill. Reg. 10038, effective June 24, 1991; emergency amendment at 15 Ill. Reg. 15790, effective October 22, 1991, for a maximum of 150 days; emergency expired March 21, 1992; amended at 16 Ill. Reg. 11131, effective June 30, 1992; amended at 17 Ill. Reg. 13468, effective July 30, 1993; amended at 18 Ill. Reg. 5859, effective April 5, 1994; amended at 18 Ill. Reg. 13431, effective August 23, 1994; amended at 19 Ill. Reg. 6477, effective April 28, 1995; amended at 20 Ill. Reg. 7515, effective May 20, 1996; amended at 21 Ill. Reg. 5572, effective April 19, 1997; amended at 21 Ill. Reg. 9116, effective June 26, 1997; amended at 22 Ill. Reg. 8007, effective April 28, 1998; amended at 23 Ill. Reg. 5564, effective April 26, 1999; amended at 24

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 650.67 Special Hunts for Disabled Hunters

Statewide regulations shall apply; season dates shall be the Thursday, Friday, and Saturday immediately prior to the first firearm deer season, and the Thursday, Friday, and Saturday immediately following the second weekend of the regular firearm season unless otherwise noted in parentheses. Permit applications may be obtained from the appropriate Illinois Department of Natural Resources regional office, and completed applications must be returned to that office by the third Friday in October. Disabled hunters must possess a Class P2A disability card in order to be eligible for the drawing. All participating hunters must show proof of passing the Illinois Hunter Safety Course or an equivalent State program for nonresidents unless otherwise noted in parentheses. Additional regulations will be publicly announced.

Clinton Lake State Recreation Area (Mascoutin State Park) (2) (5)

Rock Cut State Park (2) (5)

Starved Rock State Park (Monday, Tuesday and Wednesday before the first statewide firearm deer season only; antlerless deer only; hunter safety course not required) (2) (5)

Starved Rock State Park (Monday, Tuesday and Wednesday before the second statewide firearm deer season only; antlerless deer only; hunter safety course not required) (2) (5)

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

1) Heading of the Part: Administrative Citations

2) Code citation: 35 Ill. Adm. Code 108

3) 

Section Numbers:	Proposed Action:
108.100	New Section
108.102	New Section
108.104	New Section
108.200	New Section
108.202	New Section
108.204	New Section
108.206	New Section
108.208	New Section
108.300	New Section
108.400	New Section
108.402	New Section
108.404	New Section
108.406	New Section
108.500	New Section
108.502	New Section
108.504	New Section
108.506	New Section

4) Statutory authority: 415 ILCS 5/21(o), 21p, 26, 27, 31.1 and 42(b)(4) of the Illinois Environmental Protection Act [415 ILCS 5].

5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules, and adopt new procedural rules at Parts 101-130. The new administrative citation (AC) rules codify the Board's existing practice concerning government filings of ACs and any appeal by the AC recipient. The Board's existing practice and the proposed rules track the statutory AC process as codified in Sections 21(o) and (p), 31.1, and 42(b)(4) of the Act. In Section 108.200(b), we require units of local government who have been delegated AC authority by the Agency to annually file a copy of their agreements with the Board. The Board does not currently receive these agreements on a regular basis, and we have occasionally had questions which could easily be answered by reference to the delegation agreement. Subpart E clarifies that persons who lose their AC appeals are subject to costs which may exceed the amount of the statutory fine of \$1,500 per violation.

6) Will these proposed rules replace emergency rules currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

- 8) Do these proposed rules contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of statewide policy objectives: This rulemaking imposes procedural mandates on units of local government to the extent they may appear before the Board.

11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

Clerks Office  
Illinois Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601

Interested persons may request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620 or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

Additionally, the Board will hold two public hearings on these rules. The first hearing will be April 11, 2000 at 1:30 p.m. at:

Illinois Pollution Control Board  
Hearing Room 403  
600 S. Second Street  
Springfield, IL

The second hearing will be May 4, 2000 at 1:30 p.m. at:

James R. Thompson Center  
Room 9-040  
100 W. Randolph Street  
Chicago, IL

12) Initial regulatory flexibility analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking affects those small businesses, small municipalities, and not-for-profit corporations that appear before the Board.

B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments do not require extensive

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

reporting, bookkeeping or other procedures.

- C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.

13) Regulatory Agenda on which this rulemaking was summarized: January 2000

The full text of the proposed rule begins on the next page:

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER 1: POLLUTION CONTROL BOARD

## PART 108

## ADMINISTRATIVE CITATIONS

## SUBPART A: GENERAL PROVISIONS

Section  
108.100  
108.102  
108.104

Applicability  
Severability  
Definitions

## SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

Section  
108.200  
108.202  
108.204  
108.206  
108.208

Administrative Citation Issuance  
Service of Citation/Filing of Citation with the Board  
Filing Requirements for Petition to Contest  
Petition Contest  
AC Recipient's Voluntary Withdrawal

## SUBPART C: HEARINGS

Section  
108.300

Authorization of Hearing

## SUBPART D: BOARD DECISIONS

Section  
108.400  
108.402  
108.404  
108.406

Standard of Review/Burden of Proof  
Dismissal  
Default  
Non-Contested Citations

## SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

Section  
108.500  
108.502  
108.504  
108.506

Assessment of Penalties and Costs  
Claimed Costs of Agency or Delegated Unit  
Board Costs  
Response to Claimed Costs and Reply

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection

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## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 21(o), 21(p), 31.1, and 42(b)(4) of the Act. [415 ILCS 5/21(o), 21(p), 31.1, and 42(b)(4)].

SOURCE: Adopted in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 108.100 Applicability

- a) This Part applies to proceedings before the Board concerning petitions to contest the issuance of an administrative citation pursuant to Section 31.1 of the Act.
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101 which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and this Part, the provisions of this Part will apply.

## Section 108.102 Severability

If any provision of this Part or its application to any person is adjudged invalid, such adjudication will not affect the validity of this Part as a whole or of any portion not adjudged invalid.

## Section 108.104 Definitions

For the purpose of this Part, words and terms will have the meaning as defined in 35 Ill. Adm. Code 101. Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

## SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

## Section 108.200 Administrative Citation Issuance

An administrative citation (AC) may be issued by either of the following:

- a) Illinois Environmental Protection Agency (Agency). The Agency may issue an AC pursuant to Section 31.1 of the Act.
- b) Delegated Unit of Local Government (Delegated Unit). Pursuant to Section 4(r) of the Act, the Agency may by agreement delegate its AC authority to a unit of local government which may then issue an AC. All Delegated Units must submit to the Clerk of the Board a copy of the delegation agreement annually on or before July 1 of every year.

Section 108.202 Service of Citation/Filing of Citation with the Board

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## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

- a) In accordance with Section 31.1 of the Act, the Agency or Delegated Unit may serve an AC upon any person (AC Recipient) believed, through direct observation, to have violated subsections (c) or (p) of Section 21 of the Act. The AC must be issued and served upon the AC Recipient not more than 60 days after the date of the observed violation and must contain the following information:
  - 1) A statement specifying the provisions of subsection (c) or (p) of Section 21 of the Act that the AC Recipient was observed to be in violation;
  - 2) A copy of the inspection report in which the Agency or Delegated Unit recorded the violation, which report must include the date and time of inspection, and weather conditions prevailing during the inspection;
  - 3) The penalty imposed by Section 42(b)(4) of the Act for such violations;
  - 4) Instructions for contesting the AC findings, including notification that the AC Recipient has 35 days within which to file a petition to contest the AC; and
  - 5) An affidavit by the personnel observing the violation, attesting to their material actions and observations;
- c) As required by Section 31.1 of the Act, the Agency or Delegated Unit must file the AC with the Board no later than 10 days after the date of service upon the AC Recipient.

**Section 108.204 Filing Requirements for Petition to Contest**

- a) Who May File. The AC Recipient may file with the Board a petition to contest the AC. The AC Recipient must be named as the respondent and the Agency or Delegated Unit must be named as the complainant in accordance with Section 31.1(d)(2) of the Act.
- b) Time to File. The petition to contest must be filed with the Board within 35 days from the date of the service of the AC as required by Section 31.1(d)(1) of the Act.
- c) Additional Requirements. Additional filing and service requirements are set forth at 35 Ill. Adm. Code 101.Subpart C.

**Section 108.206 Petition Contents**

- A formal petition to contest must include:
- Any reasons why the AC Recipient believes the AC was improperly issued, including:
- a) The AC Recipient does not own the property;
  - b) The AC Recipient did not cause or allow the alleged violations;
  - c) The AC was not timely filed or properly served; or
  - d) The alleged violation was the result of uncontrollable circumstances.

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## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

**Section 108.208 AC Recipient's Voluntary Withdrawal**

The AC Recipient may, at any time before entry of the Board decision, withdraw its petition to contest. It must do so in writing or orally on the record at a hearing. If an AC Recipient withdraws its petition to contest, the Board will adopt an order in accordance with Section 108.406 of this Part.

## SUBPART C: HEARINGS

**Section 108.300 Authorization of Hearing**

- a) The hearing date will be set within 60 days after the filing of the petition to contest, unless the hearing officer orders otherwise to review material evidence.
- b) The hearing officer will give the parties at least 21 days written notice of the hearing in accordance with Section 31.1(d) of the Act.
- c) The hearing will be held in accordance with 35 Ill. Adm. Code 101.Subpart F.
- d) The hearing will be held at a time and location consistent with the Board's resources as designated by the hearing officer.

## SUBPART D: BOARD DECISIONS

**Section 108.400 Standard of Review/Burden of Proof**

- a) The burden of proof is on the Agency or Delegated Unit.
- b) The Board will issue an order finding a violation as alleged in the AC and will impose the penalty as specified in Section 42(b)(4) of the Act if, based on the record of the proceeding, the alleged violation occurred and the AC Recipient has not shown that the violation was the result of uncontrollable circumstances.

**Section 108.402 Dismissal**

The Board may issue an order dismissing the AC and closing the docket upon its own motion or a motion by the AC Recipient, Agency or Delegated Unit if the AC was not timely and properly served pursuant to Section 31.1 of the Act and Section 108.200 of this Part.

**Section 108.404 Default**

Failure of a party to appear at the hearing, or failure to proceed as ordered by the Board or hearing officer, may constitute default. Upon default the Board will issue an order against the defaulting party.

**Section 108.406 Non-Contested Citations**

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POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED RULES

Section 108.506 Response to Claimed Costs and Reply

- a) The AC Recipient may challenge the claimed costs submitted by the Agency, Delegated Unit, or the Board by filing a response. The response must be filed within 21 days after the service of the claimed costs and must be served on all parties.
- b) The Agency or Delegated Unit may file a reply to the AC Recipient's Response to claimed costs within 14 days after the service of the response.

POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED RULES

The Board will consider the AC non-contested if the AC Recipient does not file a petition to contest, fails to timely file a petition to contest, or withdraws its petition to contest pursuant to Section 108.208. If the AC is non-contested prior to hearing, the Board will adopt a final order in accordance with Section 108.500(a). If the AC Recipient withdraws its petition to contest after the hearing the Board, will adopt a final order in accordance with Section 108.500(c) of this Part.

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

Section 108.500 Assessment of Penalties and Costs

The Board will assess the penalties and costs in the following manner:

- a) If the AC is non-contested or defaulted as set forth in Sections 108.404 and 108.406 of this Part, the Board will issue an order assessing a \$500 penalty per adjudicated violation against the AC recipient for violations occurring prior to January 1, 2000, and a \$1,500 penalty per adjudicated violation against the AC recipient for violations occurring on or after January 1, 2000.
- b) If the AC Recipient contests the AC and the Board finds based on the record that the violations occurred and that the AC Recipient has not shown that the violation resulted from uncontrollable circumstances, the Board will impose a \$1,500 penalty per adjudicated violation in the AC and associated hearing costs as set forth in Sections 108.502 and 108.504 of this Part against the AC Recipient.
- c) If the AC Recipient contests the AC but voluntarily withdraws the petition for review pursuant to Section 108.208 of this Part after the start of the hearing but before the Board issues an order, the Board will impose a \$1,500 penalty per adjudicated violation in the AC and associated hearing costs as set forth in Sections 108.502 and 108.504 of this Part against the AC Recipient.

Section 108.502 Claimed Costs of Agency or Delegated Unit

Within 30 days after the close of the hearing or as otherwise directed by the hearing officer, the Agency or Delegated Unit must submit to the Clerk of the Board and serve on all parties an itemized listing of the costs associated with the hearing. Such costs must not include attorney's fees or witness fees for persons employed by the Agency or Delegated Unit.

Section 108.504 Board Costs

At the beginning of every fiscal year the Board will place on file a schedule of hearing costs for AC cases. Such schedule will include a per day breakdown of the Board's costs for holding a hearing. A copy will be available at the Board's offices and on the Board's Web site.

POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Enforcement
- 2) Code citation: 35 Ill. Adm. Code 103
- 3) Section Numbers:  
 103.100 New Section  
 103.102 New Section  
 103.104 New Section  
 103.106 New Section  
 103.200 New Section  
 103.202 New Section  
 103.204 New Section  
 103.206 New Section  
 103.208 New Section  
 103.210 New Section  
 103.212 New Section  
 103.300 New Section  
 103.302 New Section  
 103.304 New Section  
 103.306 New Section  
 103.400 New Section  
 103.402 New Section  
 103.404 New Section  
 103.406 New Section  
 103.408 New Section  
 103.410 New Section  
 103.412 New Section  
 103.414 New Section  
 103.416 New Section  
 103.500 New Section  
 103.502 New Section

- 4) Statutory authority: 415 ILCS 5/5, 7-2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, and 41 of the Environmental Protection Act [415 ILCS 5].

- 5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules, and adopt new procedural rules at Parts 101-130. Portions of existing Part 103 governing the conduct of adjudicatory cases have been transferred to Part 101 of the general rules. The remainder of Part 103 provides complaint procedures, information on requesting Agency investigations, settlement procedures, and information on penalties, fees and costs. This Part also offers specific guidelines for cases involving RCRA permits.

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POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED RULES

- 6) Will these proposed rules replace emergency rules currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed rules contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of statewide policy objectives: This rulemaking imposes procedural mandates on units of local government to the extent they may appear before the Board.
- 11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

Clerk's Office  
 Illinois Pollution Control Board  
 100 W. Randolph, Suite 11-500  
 Chicago, IL 60601  
 312/814-6931

Interested persons may request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620 or download from the Board's Web site [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

Additionally, the Board will hold two public hearings on these rules. The first hearing will be April 11, 2000 at 1:30 p.m. at:

Illinois Pollution Control Board  
 Hearing Room 403  
 600 S. Second Street  
 Springfield, IL

The second hearing will be May 4, 2000 at 1:30 p.m. at:

James R. Thompson Center  
 Room 9-040  
 100 W. Randolph Street  
 Chicago, IL

- 12) Initial regulatory flexibility analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking affects those small

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POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED RULES

businesses, small municipalities, and not-for-profit corporations that appear before the Board.

B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments do not require extensive reporting, bookkeeping or other procedures.

C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.

13) Regulatory Agenda on which this rulemaking was summarized: January 2000

The full text of the proposed rule begins on the next page:

POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED RULES

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

PART 103  
ENFORCEMENT

SUBPART A: GENERAL PROVISIONS

Section  
103.100  
103.102  
103.104  
103.106

Applicability  
Severability  
Definitions  
General

SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

Section  
103.200  
103.202  
103.204  
103.206  
103.208  
103.210  
103.212

Who May File  
Parties  
Notice, Complaint, and Answer  
Adding Parties  
Request for Informal Agency Investigation  
Notice of Complaint  
Hearing on Complaint

SUBPART C: SETTLEMENT PROCEDURE

Section  
103.300  
103.302  
103.304  
103.306

Request for Relief from Hearing Requirement in State Enforcement Proceeding  
Contents of Proposed Stipulation and Settlement Agreement  
Hearing on Proposed Stipulation and Settlement Agreement  
Board Order on Proposed Stipulation and Settlement Agreement

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section  
103.400  
103.402  
103.404  
103.406  
103.408  
103.410

Purpose, Scope, and Applicability  
Interim Order  
Joinder of the Agency  
Draft Permit or Statement  
Stipulated Draft Remedy  
Contents of Public Notice



POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED RULES

103.412 Public Comment  
103.414 Hearing  
103.416 Contents of Board Order

SUBPART E: IMPOSITION OF PENALTIES, FEES, AND COSTS

Section  
103.500 Default  
103.502 Civil Penalties Method of Payment

**AUTHORITY:** Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, and 41] and authorized by Section 26 and 27 of the Act [415 ILCS 5/26 and 27].

**SOURCE:** Procedural rules adopted at 3 Ill. Reg. 23, p. 96, effective May 29, 1983; repealed by operation of law effective October 1, 1984; new rules adopted at 9 Ill. Reg. 107, effective December 21, 1984; Old Part repealed, new Part adopted in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: GENERAL PROVISIONS

Section 103.100 Applicability

- a) This Part applies to proceedings before the Illinois Pollution Control Board (Board) concerning complaints alleging violations of the Environmental Protection Act (Act), regulations, and orders of the Board pursuant to Section 31 of the Act.
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

Section 103.102 Severability

If any provision of this Part or its application to any person is adjudged invalid, such adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 103.104 Definitions

For the purpose of this Part, words and terms will have the meaning as defined in 35 Ill. Adm. Code 101-Subpart B unless otherwise provided, or unless the

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NOTICE OF PROPOSED RULES

context clearly indicates otherwise.

Section 103.106 General

Enforcement proceedings may be initiated by the Attorney General of the State of Illinois or any person may file with the Board a complaint...against any person allegedly violating this Act or any rule or regulation thereunder or any permit or term or condition thereof. [415 ILCS 5/31(d)]. Complaints filed by persons other than the Attorney General or a State's Attorney will be known as citizen's complaints.

SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

Section 103.200 Who May File

Pursuant to Section 31 of the Act, an enforcement proceeding may be commenced by any person.

Section 103.202 Parties

- a) The person initiating an enforcement proceeding must be named the complainant. Any adverse party must be named the respondent. If the Agency is requested by the Board to conduct an investigation pursuant to Section 30 of the Act, the Board will name the Agency as a "party in interest" pursuant to 35 Ill. Adm. Code 101.404.
- b) With leave of the Board and in accordance with Section 103.206 of this Part, cross-complainants and counter-complainants may appear as parties.
- c) Misnomer of a party is not a ground for dismissal; the name of any party may be corrected at any time.

Section 103.204 Notice, Complaint, and Answer

- a) An enforcement proceeding will be commenced by the service of a notice and complaint by certified mail or personal service upon all respondents and the filing of 1 original and 9 copies of the notice and complaint with the Clerk.
- b) The notice must be directed to the respondents notifying them of the filing of the accompanying complaint and that they may be required to attend a hearing at a date set by the Board.
- c) The complaint filed by the Attorney General on behalf of the People of the State of Illinois must be captioned in accordance with 35 Ill. Adm. Code 101-Appendix A, Illustration A and contain:
  - 1) A reference to the provision of the Act and regulations which the respondents are alleged to be violating;

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## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

- 2) The dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complainant must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense; and
- 3) A concise statement of the relief which the complainant seeks.
- d) A citizen's complaint may be filed in conformance with subsection (c) of this Section.
- e) Except as provided in subsection (f) of this Section, the respondent must file an answer within 60 days after receipt of the complaint if the respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer.
- f) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506, the 60-day period to file an answer described in subsection (e) of this Section will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion.
- g) Any party serving a complaint upon another party must include the following language in the complaint: "Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney."

## Section 103.206 Adding Parties

- a) If a complete determination of the controversy cannot be had without the presence of a person who is not already a party to the proceeding, the Board, on the motion of a respondent, may order the person to be added as a respondent.
  - 1) The movant must serve, personally or by certified mail, return receipt requested, the person sought to be added with a copy of the complaint, all Board orders and hearing officer orders to date, and the motion to add a respondent. The movant also must serve the complainant with a copy of the motion to add a respondent.
  - 2) The person sought to be added and the complainant each may file a response to the motion to add a respondent within 14 days after the respective service described in subsection (a)(1) of this Section.
- b) If a complete determination of a controversy cannot be had without the presence of a person who is not already a party to the

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- c) proceeding, the Board, on its own motion, may order the person to be added as a respondent.
  - 1) If the Board orders a person to be added as a respondent pursuant to subsection (a) or (b) of this Section, the Board will grant the complainant leave to file an amended complaint that sets forth a claim in the complainant's favor against the added respondent. The complainant must serve the added respondent, personally or by certified mail, return receipt requested, with the amended complaint. The amended complaint must meet the requirements of Section 103.204 of this Subpart. The added respondent may file an answer under Section 103.204(e) of this Subpart or a responsive motion under Section 103.212(b) of this Subpart or 35 Ill. Adm. Code 101.506. Failure of the complainant to file an amended complaint in accordance with the Board's grant of leave to file an amended complaint under this subsection may subject the complainant's action to dismissal.
  - 2) With respect to a counter-complaint, cross-complaint or third party complaint, subsections (a), (b), and (c) of this Section apply to adding, as a counter-respondent, cross-respondent or third-party respondent, respectively, a person who is not already a party to the proceeding.
  - 3) If a party wishes to file a counter-complaint, cross-complaint or third-party complaint, the party must move the Board for leave to file the document. If a party wishes to file an amendment to a complaint, counter-complaint, cross-complaint or third-party complaint that sets forth a new or modified claim in its favor against another person, whether or not the person against whom the claim is made is already a party to the proceeding, the party who wishes to file the document must move the Board for leave to file the document.
    - 1) The document sought to be filed must:
      - A) set forth a claim that arises out of the occurrence or occurrences that are the subject of the proceeding; and
      - B) meet the requirements of Section 103.204.
    - 2) The movant must serve the person against whom the claim is made with a copy of the document and the motion for leave to file the document. If the person against whom the claim is made is not already a party to the proceeding, the movant must serve the person personally or by certified mail, return receipt requested.
    - 3) The person against whom the claim is made may file a response to the motion for leave to file the document within 14 days after the service described in subsection (e)(2) of this Section.
  - 4) If the Board grants a motion for leave to file a document pursuant to subsection (e) of this Section, the time period for the person against whom the claim is made to file an answer under Section 103.204(e) or a responsive motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506 will begin when the Board serves the person with a copy of the Board's order that grants the motion for leave to file the document.

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**Section 103.208 Request for Informal Agency Investigation**

- a) To request an informal Agency investigation, a citizen may submit to the Board an informal investigation request.
- b) The Board will forward the request to the Agency with a copy to the person requesting the investigation. The Agency must inform the citizen and the Board of the results of the investigation or its decision not to investigate.
- c) The Board will take no further action upon the request for informal investigation beyond the action described in subsection (b) of this Section.

**Section 103.210 Notice of Complaint**

- a) In addition to the notice of hearing requirements set forth in 35 Ill. Adm. Code 101. The Agency, when complainant, must give notice of each complaint and hearing at least 21 days before the hearing to:
  - 1) any person that has complained to the Agency respecting the complaint; and
  - 2) to any person in the county in which the offending activity occurred that has requested notice of enforcement proceedings. [415 ILCS 5/31(c)(1)]
- b) Failure to comply with the provisions of this Section may not be used as a defense to an enforcement proceeding, but any person adversely affected by such failure of compliance may upon motion to the hearing officer have the hearing postponed if prejudice is shown.

**Section 103.212 Hearing on Complaint**

- a) Any person may file with the Board a complaint...against any person allegedly violating this Act or any rule or regulation thereunder or any permit or term or condition thereof. Such a complaint is known as a citizen's complaint. When the Board receives a citizen's complaint, unless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing. [415 ILCS 5/31(d)] The definition for duplicative and frivolous can be found at 35 Ill. Adm. Code 101.Subpart B.
- b) Motions made by respondents alleging that a citizen's complaint is duplicative or frivolous must be filed no later than 30 days following the date of service of the complaint upon the respondent. Motions under this subsection may be made only with respect to citizen's enforcement proceedings. Timely filing the motion will, pursuant to Section 103.204(f) of this Subpart, stay the 60 day period for filing an answer to the complaint.
- c) The Board will automatically set for hearing all complaints filed by

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the Attorney General or a State's Attorney on behalf of the People of the State of Illinois.

d) The Board in its discretion may hold a hearing on the violation and a separate hearing on the remedy.

**SUBPART C: SETTLEMENT PROCEDURE****Section 103.300 Request for Relief from Hearing Requirement in State Enforcement Proceeding**

- a) When a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a proposed stipulation and settlement agreement accompanied by a request for relief from the requirement of hearing pursuant to Section 31(c)(2) of the Act. [415 ILCS 5/31(c)(2)] The proposed stipulation and settlement agreement must conform to the statement required for settlement submissions at hearing in Section 103.302 of this Part.
- b) Unless the Board, in its discretion, concludes that a hearing will be held, the Board will cause notice of the proposed stipulation and settlement, and request for relief to be published and sent in the same manner as is required for hearing, by the Clerk's office. The notice will include a statement that any person may file with the Clerk of the Board a written demand for a hearing within 21 days after publication of the notice. Such written demand for hearing must clearly state that a public hearing is requested and should indicate the assigned Board Docket number and respondent's name in the matter.
- c) If any person files a timely written demand for a hearing, the Board will deny the request for relief from a hearing and will hold a hearing in accordance with the notice provisions of Section 31(c)(1) of the Act. [415 ILCS 5/31(c)(2)]
- d) If a hearing is scheduled pursuant to subsection (c) of this Section, the complainant(s) do not have to present a prima facie case before the hearing officer. A copy of the proposed stipulation and settlement will be entered into and presented for the record.
  - 1) All such hearings shall be open to the public, and any person may submit written statements to the Board in connection with the subject thereof. In addition, the Board may permit any person to offer oral testimony. [415 ILCS 5/32]
  - 2) In addition to their statutory participation rights, members of the public present at the hearing may participate as provided in 35 Ill. Adm. Code 101.110.

**Section 103.302 Contents of Proposed Stipulation and Settlement Agreement**

No proceeding pending before the Board will be disposed of or modified without an order of the Board. A proposed stipulation and settlement agreement must

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contain a written statement, signed by the parties or their authorized representatives, outlining the nature of, the reasons for, and the purpose to be accomplished by the settlement. Such written statement must include:

- a) A full stipulation of all material facts pertaining to the nature, extent, and causes of the alleged violations;
- b) The nature of the relevant parties' operations and control equipment;
- c) *The character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;* [415 ILCS 5/33(c)(1)]
- d) Details as to future plans for compliance, including a description of additional control measures and the dates for their implementation, if any; and
- e) The proposed penalty, if any.

## Section 103.304 Hearing on Proposed Stipulation and Settlement Agreement

When the parties submit a proposed stipulation and settlement agreement to the hearing officer at hearing, on when the Board orders that a hearing be held in accordance with Section 103.300(c) of this Part, the hearing officer will conduct a hearing in which interested persons may make statements with respect to the nature of the alleged violation and its impact on the environment, together with their views on the proposed stipulation and settlement agreement. Such statements must be in accordance with 35 Ill. Adm. Code 101.628.

## Section 103.306 Board Order on Proposed Stipulation and Settlement Agreement

- a) The Board will consider such proposed settlement and stipulation agreement and the hearing record. The Board may accept, suggest revisions in, reject the proposed settlement and stipulation agreement, or direct further hearings as it deems appropriate. Where a National Pollutant Discharge Elimination System (NPDES) permit is involved in the settlement, notice of settlement must be published in the Environmental Register at least 30 days prior to such settlement.
- b) If the Board determines that a settlement involves or may involve the issuance or modification of a Resource Conservation Recovery Act (RCRA) permit it will enter an interim order pursuant to Section 103.402 of this Part.

## SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

## Section 103.400 Purpose, Scope, and Applicability

- a) This Subpart applies when the Board finds in an interim order that an enforcement proceeding involves issuance or modification of a RCRA permit.
- b) Enforcement proceedings that involve issuance or modification of a

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RCRA permit include those in which, to grant complete relief, it appears that the Board will have to:

- 1) Revoke a RCRA permit;
  - 2) Order a RCRA permit issued or modified;
  - 3) Enter an order that could require actions which would be different from the conditions of a RCRA permit or 35 Ill. Adm. Code 724 or 725; or
  - 4) Enter an order directing facility closure or modification after a finding that a facility was operating without a RCRA permit and that one was required.
- c) These procedures provide methods by which the Board will formulate a compliance plan, and, if necessary, direct the issuance or modification of a RCRA permit.

## Section 103.402 Interim Order

a) The Board will enter an interim order invoking the procedures of this Subpart on its own motion or on the motion of any party. Before the Board enters an interim order the parties must develop, through hearings or admissions pursuant to 35 Ill. Adm. Code 101.Subpart F, a sufficient record to support the findings which the Board must make in subsection (b) of this Section.

- b) An interim order invoking the procedures of this Subpart will include:
  - 1) A finding or proposed finding of violation and any penalty or proposed monetary penalty;
  - 2) A finding that the proceeding is an enforcement action that involves or may involve the issuance or modification of a RCRA permit;
  - 3) Joinder of the Agency if it is not already a party; and
  - 4) A time schedule for filing by the Agency of a partial draft permit.
- c) The interim order is not a final order and may be appealed only with leave of the Board.

## Section 103.404 Joinder of the Agency

If the Board directs that the Agency be joined, the Clerk will send, by messenger or by certified mail addressed to the Agency, a copy of the Board Order requiring joinder. Such mailing will constitute service of process upon the Agency.

## Section 103.406 Draft Permit or Statement

- a) Within 60 days after entry of an interim order, the Agency must file and serve on all parties either a partial draft permit or a statement that no RCRA permit needs to be issued or modified.

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- b) The partial draft permit must be in compliance with the requirements of 35 Ill. Adm. Code 705.141 and must include such conditions as the Agency finds are necessary to correct the violations found in the interim order.
- c) The Agency may confer with other parties and enter into agreements as to the substance of the partial draft permit which it will recommend to the Board. The Agency must disclose any such conferences or agreements in the proposed draft permit. Such agreements do not bind the Board.
- d) If the Agency issues a statement that no RCRA permit needs to be issued or modified, the remaining procedures of this subpart will not be followed, unless the Board determines otherwise.

## Section 103.408 Stipulated Draft Remedy

- a) The parties may agree to a stipulated draft remedy.
- b) A stipulated draft remedy must include the following:
  - 1) Proposed mandatory orders that the parties agree should be included in the Board's final order, which may include one or more of the following:
    - A) An order to cease and desist conducting regulated activities;
    - B) An order to close a facility or unit;
    - C) An order to execute a post-closure care plan;
    - D) A compliance plan, including a time schedule to assure compliance with regulations in the shortest possible time;
    - E) An order to provide a performance bond or other financial assurance;
    - F) An order to apply for a permit or permit modification; and
    - G) An order revoking a permit.
  - 2) A partial draft permit or statement as provided by Section 103.406 of this Part.
  - 3) A statement as to whether or not the stipulation is divisible for purposes of Board determinations.
- c) All parties, including the Agency, must sign the stipulated draft remedy before notice is given pursuant to Section 103.410 of this Part.

## Section 103.410 Contents of Public Notice

- a) In addition to all parties, the Agency must serve a copy of any partial draft permit on USEPA at the address listed in 35 Ill. Adm. Code 101 Subpart C.
- b) In addition to the requirements of the Act and Section 103.208 of this Part, the Agency must, at a minimum, give notice of the filing of a partial draft permit to the following persons:

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- 1) Federal agencies as designated by USEPA;
- 2) Illinois Department of Transportation;
- 3) Illinois Department of Natural Resources;
- 4) Illinois Department of Public Health;
- 5) The Governor or any other state adjacent to the county in which the facility is located; and
- 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.
- c) In addition to the methods of notice by publication of Section 103.208 of this Part, the Agency must give notice by broadcast over at least one radio station in the area of the facility containing the information required by subsections (d)(2), (d)(4) and (d)(6) through (d)(8).
- d) A notice of a partial draft permit must include the following information:
  - 1) The address of the Board office;
  - 2) Name and address of the respondent and, if different, of the facility subject to the enforcement proceeding;
  - 3) A brief description of the business conducted at the facility and the activity which is the subject of the enforcement proceeding;
  - 4) A statement of the violations the Board has found or has proposed to find;
  - 5) A statement that the Agency has filed a partial draft permit;
  - 6) Name, address and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the partial draft permit or stipulated remedy;
  - 7) A notice of a hearing, the address of the Board, a statement that a hearing will be held and that the record will remain open for 45 days after the filing of the partial draft or stipulated remedy for written comments;
  - 8) A statement that the record in the proceeding is available at the Board office for inspection, except those portions which are claimed or determined to be trade secrets, and that procedures are available whereby disclosure may be sought by the public in accordance with 35 Ill. Adm. Code 130;
  - 9) A statement that enforcement proceedings are considered pursuant to 415 ILCS 5/30 et seq.; and
  - 10) Any additional information considered necessary or proper.

## Section 103.412 Public Comment

Any person, including USEPA, may comment on the partial draft permit or stipulated draft remedy within 45 days after it has been filed with the Board

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and notice given pursuant to Section 103.410 of this Part. Parties will receive distributions from the Clerk's Office in accordance with 35 Ill. Adm. Code 101.628(c)(3).

**Section 103.414 Hearing**

- a) The hearing officer, after appropriate consultation with the parties, will set a time and place for the hearing to be held not less than 30 days after the filing of the partial draft permit or stipulated remedy.
- b) The hearing will be held in the county in which the facility is located, in the population center in such county closest to the facility.
- c) The Clerk in consultation with the hearing officer will give notice of the hearing to the persons entitled to notice in Sections 103.208 and 103.410 of this Part, and to any other persons who have commented, requested to comment or requested notice, and to any persons on a mailing list provided by the Agency.
- d) Notice will be mailed not less than 30 days before the hearing.
- e) Failure to comply with the provisions of this Section may not be used as a defense to an enforcement proceeding, but any person adversely affected by such failure of compliance may upon motion to the hearing officer or Board have the hearing postponed if prejudice is shown.
- f) Whenever a proceeding before the Board may affect the right of the public individually or collectively to the use of community sewer or water facilities provided by a municipality owned or publicly regulated, the Board will, at least 30 days prior to the scheduled date for the first hearing in such proceeding, give notice of the date, time, place, and purpose of such hearing by public advertisement in a newspaper of general circulation in the area of the state concerned.

**Section 103.416 Contents of Board Order**

- a) The Board will not enter an order that would require the issuance or modification of a RCRA permit unless the public notice, public comment and hearing procedures of this subpart have been followed.
- b) If the Board determines that, to grant complete relief, it must order the issuance or modification of a RCRA permit, its final order will include an order directing the Agency to issue or modify the RCRA permit, which may take one of the following forms:
  - 1) An order to issue or modify a permit in conformance with a draft permit;
  - 2) An order to issue or modify a permit in conformance with a draft permit as modified by the Board order; or
  - 3) Guidelines for issuance or modification of a permit in

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- c) If the order specifies a schedule leading to compliance with the Act and Board rules:
  - 1) Such schedule will require compliance as soon as practicable; and
  - 2) The order may require the posting of sufficient performance bond or other security to assure correction of such violation within the time prescribed.

**SUBPART E: IMPOSITION OF PENALTIES, FEES, AND COSTS****Section 103.500 Default**

The procedures for default can be found at 35 Ill. Adm. Code 101.608.

**Section 103.502 Civil Penalties Method of Payment**

- a) Payment of the penalty must be made by certified or cashier's check, money order, or in installments by the foregoing means after execution of a promissory note containing an agreement for judgment.
- b) All remittances must be made payable to the Environmental Protection Trust Fund or such other fund as specified by the Board.
- c) Any such penalty not paid within the time prescribed in the Board order will incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act [35 ILCS 5/1003(a)].

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1) Heading of the Part: Enforcement Proceedings  
2) Code citation: 35 Ill. Adm. Code 103

<u>Section Numbers:</u>	<u>Proposed Action:</u>
103.101	Repeal
103.120	Repeal
103.121	Repeal
103.122	Repeal
103.123	Repeal
103.124	Repeal
103.125	Repeal
103.140	Repeal
103.141	Repeal
103.142	Repeal
103.143	Repeal
103.160	Repeal
103.161	Repeal
103.162	Repeal
103.163	Repeal
103.180	Repeal
103.200	Repeal
103.201	Repeal
103.202	Repeal
103.203	Repeal
103.204	Repeal
103.205	Repeal
103.206	Repeal
103.207	Repeal
103.208	Repeal
103.209	Repeal
103.210	Repeal
103.220	Repeal
103.221	Repeal
103.222	Repeal
103.223	Repeal
103.224	Repeal
103.240	Repeal
103.241	Repeal
103.260	Repeal
103.261	Repeal
103.262	Repeal
103.263	Repeal
103.264	Repeal
103.265	Repeal
103.266	Repeal

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103.267 Repeal  
103.268 Repeal  
APPENDIX A

- 4) Statutory authority: 415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, and 41 of the Environmental Protection Act [415 ILCS 5].
- 5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules, and adopt new procedural rules at Parts 101-108, Part 125 and Part 130.
- 6) Will these proposed rules replace emergency rules currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed rules contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of statewide policy objectives: While this proposed repealer does not impose a State mandate, the proposed new Part 103 imposes procedural mandates on units of local government to the extent they may appear before the Board.
- 11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:  
  
Clerk's Office  
Illinois Pollution Control Board  
100 W. Randolph, Suite 11-500  
Chicago, IL 60601  
  
Request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620 or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

12) Initial regulatory flexibility analysis:

- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance:

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 TITLE 35: ENVIRONMENTAL PROTECTION  
 SUBTITLE A: GENERAL PROVISIONS  
 CHAPTER I: POLLUTION CONTROL BOARD  
 PART 103  
 ENFORCEMENT PROCEEDINGS (REPEALED)  
 SUBPART A: GENERAL PROVISIONS

Section 103.101 Applicability  
 SUBPART B: COMPLAINT, SERVICE AND AUTHORIZATION OF HEARING

Section 103.120 Who May Initiate  
 103.121 Parties  
 103.122 Notice, Formal Complaint, and Answer  
 103.123 Service  
 103.124 Authorization of Hearing  
 103.125 Notice of Hearing

Section 103.140 Motions and Responses  
 103.141 Consolidation and Severance of Claims and Joining Additional Parties  
 103.142 Intervention  
 103.143 Continuances

Section 103.160 Prehearing Conferences  
 103.161 Discovery  
 103.162 Admissions  
 103.163 Subpoenas

Section 103.180 Settlement Procedure  
 SUBPART E: SETTLEMENT PROCEDURE

SUBPART F: CONDUCT OF HEARINGS AND RULES OF EVIDENCE

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None

- C) Types of professional skills necessary for compliance: None  
 13) Regulatory Agenda on which this rulemaking was summarized: January 2000  
 The full text of the proposed repealer begins on the next page:



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Section  
103.200 Authority of Hearing Officer  
103.201 Authority of Board Members and Board Assistants  
103.202 Order of Enforcement Hearings  
103.203 Conduct of Hearing  
103.204 Admissible Evidence  
103.205 Written Narrative Testimony  
103.206 Official Notice  
103.207 Viewing of Premises  
103.208 Admission of Business Records in Evidence  
103.209 Examination of Adverse Party or Agent and Hostile Witnesses;  
103.209 Compelling Appearance Thereof at Hearing  
Amendment and Variance

SUBPART G: POST-HEARING PROCEDURES

Section  
103.220 Default  
103.221 Transcript  
103.222 Record  
103.223 Briefs and Oral Argument  
103.224 Contents of Board Opinions and Orders

SUBPART H: RELIEF FROM FINAL ORDERS

Section  
103.240 Motion Subsequent to Entry of Final Order  
103.241 Relief from Section 103.224 Final Orders

SUBPART I: DECISION IN CASES INVOLVING RCRA PERMITS

Section  
103.260 Purpose, Scope and Applicability  
103.261 Interim Order  
103.262 Joinder of Agency  
103.263 Draft Permit or Statement  
103.264 Stipulated Draft Remedy  
103.265 Contents of Public Notice  
103.266 Public Comment  
103.267 Hearing  
103.268 Contents of Board Order

APPENDIX A Old Rule Numbers Referenced

AUTHORITY: Implementing Sections 5, 31, 32 and 33 and authorized by Section 26 of the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, pars.

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1005, 1031, 1032, 1033 and 1026).

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part III, Enforcement Proceedings, in 870-4, at 1 PCB 43, October 8, 1970; amended in R80-2, at 39 PCB 456, at 4 Ill. Reg. 39, P. 285, effective September 12, 1980; amended in R80-18, at 44 PCB 125, at 5 Ill. Reg. 14146, effective December 3, 1981; codified at 6 Ill. Reg. 6357; amended in R84-10 at 9 Ill. Reg. 1983, effective January 16, 1985; Part repealed in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: GENERAL PROVISIONS

Section 103.101 Applicability

The Rules in this Part apply where applicable to proceedings to adjudicate alleged violations of the Environmental Protection Act (Act), regulations, orders of the Board, permit appeals, and variance petitions. Unless the contrary is clearly indicated, all references to "Parts" or "Sections" are to Illinois Administrative Code, Title 35: Environmental Protection. For example, "Part 309" is 35 Ill. Adm. Code 309, and "Section 309.101" is 35 Ill. Adm. Code 309.101.

SUBPART B: COMPLAINT, SERVICE AND AUTHORIZATION  
OF HEARING

Section 103.120 Who May Initiate

An enforcement proceeding may be commenced by any person.

Section 103.121 Parties

- The person initiating an enforcement proceeding shall be designated the complainant. Any adverse party shall be designated the respondent.
- Misnomer of a party is not a ground for dismissal; the name of any party may be corrected at any time.
- If a complete determination of a controversy cannot be had without the presence of other parties, the Board or Hearing Officer shall order them to be brought in. If a person not a party has an interest which the order may affect, the Board or Hearing Officer may order him to be made a party. Service of process and subsequent pleadings shall be had as directly by Section 103.123.

Section 103.122 Notice, Formal Complaint, and Answer

- An enforcement action shall be commenced by the service of a notice

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and formal complaint upon all respondents and the filing of 10 copies of the notice and formal complaint with the Clerk.

- b) The notice shall be directed to the respondents notifying them of the filing of the accompanying complaint and that they may be required to attend a hearing at a date set by the Board.

- c) The formal complaint shall contain:

- 1) A reference to the provision of the Act and regulations which the respondents are alleged to be violating;
  - 2) The dates, location, events, nature, extent, duration, and strength of discharges or emissions, and consequences alleged to constitute violations of the Act and regulations. The complaint shall advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense; and
  - 3) A concise statement of the relief which the complainant seeks.
- d) Respondent may file an answer within 30 days of receipt of the complaint. All material allegations of the complaint shall be taken as denied if not specifically admitted by the answer, or if no answer is filed. Any facts constituting an affirmative defense which would be likely to take the complainant by surprise must be plainly set forth prior to hearing in the answer or in a supplemental answer filed pursuant to Section 103.210(b).

## Section 103.123 Service

- a) A copy of the notice and complaint shall either be served personally on the respondent or his authorized agent, or shall be served by registered or certified mail with return receipt signed by the respondent or his authorized agent. Proof shall be made by affidavit of the person making personal service, or by properly executed registered or certified mail receipt. Proof of service of the notice and complaint shall be filed with the Clerk immediately upon completion of service.
- b) After notice and complaint, all pleadings, motions, and discovery notices and all other notices shall be served personally or by First Class United States mail, and 10 copies of pleadings and motions shall be filed with the Clerk with proof of service. Two copies of any discovery motion, deposition, interrogatories, answers to interrogatories or subpoenas shall be filed with the Clerk with proof of service.
- c) Service by mail is presumed complete four days after mailing.

## Section 103.124 Authorization of Hearing

- a) The Clerk shall assign a docket number to each complaint filed, deposit the complaint and notice in the Board's files, and distribute copies to each Board Member. If the complaint is filed by a person

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other than the Agency, the Clerk shall also send a copy to the Agency; the Chairman shall place the matter on the agenda for Board determination whether the complaint is duplicitous or frivolous. If the Board rules that the complaint is duplicitous or frivolous, it shall enter an order setting forth its reasons for so ruling and shall notify the parties of its decision. If the Board rules that the complaint is not duplicitous or frivolous, this does not preclude the filing of motions regarding the insufficiency of the pleadings.

- b) If the Board rules that the complaint is not duplicitous or frivolous, or if the complaint is filed by the Agency, the Chairman shall designate a Hearing Officer and the Clerk shall notify the parties of such designation. The Hearing Officer may be a Member of the Board if otherwise qualified.

## Section 103.125 Notice of Hearing

- a) The Hearing Officer, after appropriate consultation with the parties, shall set a time and place for hearing to be held within 90 days after the filing of the complaint unless the Board orders otherwise.

- b) The hearing shall be held in the county in which the alleged violation occurred or in such other county as the Hearing Officer shall for stated cause designate. The Clerk shall give notice of the hearing at least 21 days before the hearing to:

- 1) All persons on the Board's mailing list by notice in the Board's Environmental Register, or by special mailing; and
- 2) Except when the Agency is complainant, by public advertisement in a newspaper of general circulation in the county in which the cause of action arose.

- c) The Hearing Officer shall give notice of the hearing, at least 21 days before the hearing, to the parties in accordance with Section 103.123(b).

- d) The Agency, when complainant, shall give notice of each complaint and hearing at least 21 days before the hearing to:

- 1) Any person who has complained to the Agency with respect to respondent within six months preceding the date of the complaint;
- 2) Any person in the county in which the alleged offending activity occurred who has requested notice of enforcement proceedings;
- 3) The public, by public advertisement in a newspaper of general circulation in the county in which the cause of action arose; and
- 4) Such other persons as required by law.

- e) Failure to comply with the provisions of this section may not be used as a defense to an enforcement action, but any person adversely affected by such failure of compliance may upon motion to the Hearing Officer have the hearing postponed if prejudice is shown.

- f) Whenever a proceeding before the Board may affect the right of the public individually or collectively to the use of community sewer or

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water facilities provided by a municipally owned or publicly regulated company, the Board shall at least 30 days prior to the scheduled date of the first hearing in such proceeding, give notice of the date, time, place, and purpose of such hearing by public advertisement in a newspaper of general circulation in the area of the State concerned.

SUBPART C: MOTIONS, JOINDER AND INTERVENTION

Section 103.140 Motions and Responses

- a) All motions preliminary to a hearing shall be presented to the Board or to the Hearing Officer at least 14 days prior to the date of the hearing, or on such other date as the Hearing Officer or the Board shall designate. All motions by respondent to dismiss or strike the complaint or challenging the jurisdiction of the Board shall be filed within 14 days after receipt of complaint, shall be directed to the Board and shall be disposed of prior to hearing on the complaint; subject, however, to subsections (e) and (i). Motions by complainant to voluntarily dismiss an action against any or all parties as to any or all claims shall be directed to the Board and may be made orally upon the hearing record, or may be made in writing at any time prior to issuance of the Board's decision. All motions must be served on all parties, including the Agency and its representative and the Hearing Officer designated by the Board, with proof of service. Oral argument on motions before the Board shall be permitted only by order of the Board.
- b) Unless made orally on the record during a hearing or unless the Hearing Officer directs otherwise, a motion shall be in writing, shall state the reasons for and grounds upon which the motion is made, and may be accompanied by any affidavits or other evidence relied on, and, when appropriate, by a proposed order. All written motions by complainant to voluntarily dismiss an enforcement action shall be accompanied by affidavit attesting to the truth of the facts alleged.
- c) Within 7 days after service of a written motion, or such other period as the Board or Hearing Officer may prescribe, a party may file a response in support of or in opposition to the motion, accompanied by affidavits or other evidence. If no response is filed, the parties shall be deemed to have waived objection to the granting of the motion, but such waiver of objection does not bind the Board in its determination. The moving party shall not have the right to reply, except as permitted by the Hearing Officer or the Board.
- d) No oral argument will be heard on a motion before the Board unless the Board so directs. A written brief may be filed with a motion or an answer to a motion, stating the arguments and authorities relied on. The Hearing Officer shall rule upon all motions, except that he shall have no authority to dismiss, or rule upon a motion to dismiss or

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decide a proceeding on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike any claim or defense for insufficiency or want of proof. The Hearing Officer shall refer any such motions to the Board, pursuant to paragraph (a). Notwithstanding the provisions of paragraph (a) above, the Board in its discretion, may direct that hearing on the proceeding be conducted and, in its discretion, may take all motions directed to it with the case. This conditional ruling by the Board shall not foreclose a party from advancing the same contentions as to jurisdiction or adequacy of the complaint upon the completion of the hearing. When ruling on a motion by complainant for voluntary dismissal of an action the Board shall, for reasons stated in its order, dismiss the action without leave to reinstate if justice so demands. Among the factors to be considered in making such a determination are evidence and arguments concerning the action's age and procedural history, and the prejudicial effects, if any, of dismissing the action with leave to reinstate.

- f) No interlocutory appeal of a motion may be taken to the Board from a ruling of the Hearing Officer, except by allowance of the Board after motion filed by a party or the Hearing Officer. When in the judgment of the Hearing Officer prompt decision is necessary to prevent harm to the public interest or to avoid unusual delay or expense, the Hearing Officer may refer the ruling promptly to the Board and notify the parties either by announcement on the record or by written notice if the hearing is not in session.
- g) Rulings of the Hearing Officer may be reviewed by the Board after conclusion of the hearing, but will be set aside only to avoid material prejudice to the rights of a litigant. The Hearing Officer, if a member of the Board, may vote upon motions to review his rulings as Hearing Officer.
- h) Unless otherwise provided herein or ordered by the Board, neither the filing of a motion nor the certification of a question to the Board shall stay the proceeding or extend the time for the performance of any act.
- i) Any party may participate in the proceedings without forfeiting any jurisdictional objection, if such objection is raised at or before the time the respondent files his initial pleading or motion, or, if no pleading or motion is made, within 14 days after receipt of complaint. All jurisdictional objections shall conform to the requirements of subsection (a).

Section 103.141 Consolidation and Severance of Claims and Joining Additional Parties

In the interest of convenient, expeditious, and complete determination of claims, the Board may consolidate or sever enforcement, variance, permit or other adjudicative claims involving any number of parties, and may order

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additional parties to be brought in pursuant to the provisions of Section 103.121(c).

## Section 103.142 Intervention

- a) Upon timely written application and subject to the necessity for conducting an orderly and expeditious hearing, the Hearing Officer shall permit any person to intervene in an enforcement proceeding when either of the following conditions is met:
  - 1) The applicant is so situated that he may be adversely affected by a final order of the Board; or
  - 2) An applicant's claim or defense and the enforcement proceeding involve a common question of law or fact.
- b) Ten (10) copies of a petition for intervention shall be filed with the Board and the applicant shall also serve copies on each party not later than 48 hours prior to the date set for hearing. The Hearing Officer may permit intervention at any time before the beginning of the hearing when good cause for delay is shown. Upon allowance of intervention the Hearing Officer shall notify the parties and the Clerk and may allow a continuance of the hearing to enable adequate pre-hearing procedures as justice may require.
- c) An intervenor shall have all the rights of an original party, except that the intervenor shall be bound by orders theretofore issued and shall not raise issues which actually were raised or were required to be raised at an earlier stage of the proceeding.
- d) Whenever a proceeding before the Board may affect the right of the public individually or collectively to the use of community sewer or water facilities provided by a municipally owned or publicly regulated company, all persons claiming an interest shall have the right to intervene as parties pursuant to this section and present evidence of such social and economic impact.

## Section 103.143 Continuances

- a) A motion for continuance for any enforcement, variance or permit appeal proceeding shall be granted by the Hearing Officer whenever justice may require. All motions for continuance must be supported by an affidavit or written motion before the Hearing Officer by the person or persons having knowledge of the facts supporting the motion. Provided, however, that if the Board determines, in its discretion, that any variance petition, permit appeal, or enforcement case is not proceeding expeditiously to a conclusion, the Board shall order such actions as it deems appropriate to reach an expeditious conclusion.
- b) No continuance shall be granted to the petitioner for any variance or permit appeal proceeding unless the deadline for final Board action, whenever applicable, is extended by the petitioner for a like period,

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as a minimum.

## SUBPART D: DISCOVERY, ADMISSIONS AND SUBPOENAS

## Section 103.160 Prehearing Conferences

- a) Upon written notice by the Hearing Officer in any proceeding, parties or their attorneys may be directed to appear at a specified time and place for a conference, prior to or during the course of hearing for the purposes of:
  - 1) Simplifying the issues;
  - 2) Amending the pleadings for clarifications, amplification, or limitation;
  - 3) Making admissions of facts or stipulating to the admissibility of any matters to expedite the hearing;
  - 4) Limiting the number of witnesses;
  - 5) Exchanging prepared testimony and exhibits; and
  - 6) Aiding in the simplification of the evidence and disposition of the proceeding.
- b) Action taken at the conference shall be noted in the hearing record, unless the parties enter upon written stipulation as to such matters, or agree to a statement in another appropriate ruling.

## Section 103.161 Discovery

- a) Regarding any matter not privileged, the Hearing Officer shall order discovery upon the written request of any party when parties cannot agree on the legitimate scope of discovery. It is not a ground for objection that the testimony will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence or is relevant to the subject matter involved in the pending action. The Hearing Officer shall order:
  - 1) The production of the identity and location of persons having knowledge of relevant facts.
  - 2) The taking of the deposition of any witness including expert witnesses expected to testify at the hearing.
  - 3) The taking of the interrogatory of any party.
  - 4) The production of evidence under the control or possession of any party for the purposes of inspection and where necessary for purposes of copying or duplication. This shall include the right of reasonable inspection of premises of any party.
- b) The Hearing Officer may at any time on his own initiative, or on motion of any party or witness, make a protective order as justice requires, denying, limiting, conditioning or regulating discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect materials from disclosure by the party obtaining such

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materials consistent with the provisions of Sections 7 and 7.1 of the Act.

- c) All depositions and interrogatories taken pursuant to this section shall be for purposes of discovery only, except as herein provided. Depositions and interrogatories may be used for purposes of impeachment and as admissions of the deposed or interrogated person. Upon application to the Hearing Officer either before or after the taking of such deposition or interrogatories and upon a showing at the time of the hearing that the person deposed or interrogated will not be available to participate in the hearing because of death, age, sickness, infirmity, absence from the country or other exceptional circumstances, the Hearing Officer may order that the deposition or interrogatories be used as evidence in the hearing.
- d) Upon transcription of the deposition, it shall be made available to the deponent for examination, unless his signature is waived by him and by the parties who are represented at the deposition. Any change in form or substance which the deponent desires to make shall be entered upon the deposition by the Hearing Officer with a statement of the reasons given by the deponent making them. The deposition shall then be signed by the deponent unless he is ill or cannot be found or refuses to sign, in which event the Hearing Officer's certificate shall state the reason for the omission of the signature.
- e) A party at hearing may exclude by objection those portions of any deposition which contain evidence that would be excluded if the witness were testifying in person.

- f) All objections to rulings of the Hearing Officer shall be made in the record. When, in the judgment of the Hearing Officer prompt decision by the Board is necessary the Hearing Officer may request the Board to rule on the objection. The Board shall grant or deny the objection or in its discretion rule that the Hearing Officer's ruling be conditionally upheld and take the objection with the case. Any ruling by the Board to grant or deny the objections or to conditionally uphold the ruling of the Hearing Officer shall not relieve the objecting party of otherwise complying with the requirements of Section 103.140(e).

- g) Subsections 103.140(b), (c), (d), (e), (g), (h), and (i) shall apply regarding procedures for ruling on objections.

- h) Failure to comply with any ruling shall subject the person to sanctions under Part 107.

## Section 103.162 Admissions

- a) Request for Admission of Fact. A party may serve on any other party, no sooner than 21 days after filing of the complaint, a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request.

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- b) Request for Admission of Genuineness of Document. A party may serve on any other party, no sooner than 21 days after filing of the complaint, a written request for admission of the genuineness of any relevant documents described in the request. Copies of the document shall be served with the request unless copies have already been furnished.
- c) Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 20 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission. If good faith requires that a party deny only a part, or requires qualification, of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder. Any objection to a request or to an answer shall be heard by the Hearing Officer upon prompt notice and motion of the party making the request.
- d) Effect of Admission. Any admission made by a party pursuant to request under this section is for the purpose of the pending action only. It does not constitute an admission by him for any other purpose and may not be used against him in any other proceeding.
- e) Expenses of Refusal to Admit. If a party, after being served with a request to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter of fact, he may apply to the Board for an order under Part 107.

## Section 103.163 Subpoenas

- a) Upon timely motion to the Board by any party, or on motion of the Hearing Officer or the Board, the Hearing Officer or the Board shall issue a subpoena for attendance at a deposition or a hearing. The subpoena may include a command to produce evidence reasonably necessary to resolution of the matter under consideration, subject to the limitations on discovery prescribed by this Chapter. A copy of the subpoena shall be served upon the Clerk for Board files. If the witness is a non-resident of the state, the order may provide such terms and conditions in connection with his appearance at the hearing

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- as are just, including payment of his reasonable expenses.
- b) Every subpoena shall state the title of the action and shall command each person to whom it is directed to attend and give testimony at the time and place therein specified.
  - c) The Hearing Officer or the Board, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable and oppressive.
  - d) Failure of any witness to comply with a Board subpoena shall subject the witness to sanctions under Part 107.

## SUBPART E: SETTLEMENT PROCEDURE

## Section 103.180 Settlement Procedure

- a) No case pending before the Board shall be disposed of or modified without an order of the Board. All parties to any case in which a settlement or compromise is proposed shall file with the Hearing Officer, at the time of the scheduled hearing a written statement, signed by the parties or their authorized representatives, outlining the nature of, the reasons for, and the purpose to be accomplished by the settlement. Such statement shall contain:
  - 1) A full stipulation of all material facts pertaining to the nature, extent and causes of the alleged violations;
  - 2) The nature of the relevant parties' operations and control equipment;
  - 3) Any explanation for past failures to comply and an assessment of the impact on the public resulting from such noncompliance;
  - 4) Details as to future plans for compliance, including a description of additional control measures and the dates for their implementation; and
  - 5) The proposed penalty.
- b) When the parties submit a proposed settlement or stipulation to the Hearing Officer, the Hearing Officer shall conduct a hearing in which all interested persons may testify with respect to the nature of the alleged violation and its impact on the environment, together with their views on the proposed stipulation and settlement. The Hearing Officer shall transmit such record of hearing to the Board, together with all exhibits.
- c) The Board shall consider such proposed settlement and stipulation and the hearing record. The Board may accept, suggest revisions in, reject the proposed settlement and stipulation, or direct further hearings as it appears appropriate. Where an NPDES (National Pollutant Discharge Elimination System) permit is involved in the settlement, notice of hearing shall be published in the Environmental Register at least 30 days prior to such hearing.

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- d) If the Board determines that a settlement involves or may involve the issuance or modification of a RCRA permit it will enter an interim order pursuant to Section 103.261.

## SUBPART F: CONDUCT OF HEARINGS AND RULES OF EVIDENCE

## Section 103.200 Authority of Hearing Officer

The Hearing Officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear and complete record. He shall have all powers necessary to these ends including (but not limited to) the authority to:

- a) Issue discovery orders;
- b) Rule upon objections to discovery orders;
- c) Make such protective orders as justice requires, denying, limiting, conditioning or regulating discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect materials from disclosure by the party obtaining such materials;
- d) Hold pre-hearing conferences for settlement, simplification of the issues, or any other proper purposes;
- e) Administer oaths and affirmations;
- f) Rule upon offers of proof and receive evidence and rule upon objections to the introduction of evidence, subject to Section 103.203;
- g) Regulate the course of the hearings and the conduct of the parties and their counsel;
- h) Examine witnesses for the sole purpose of clarifying the record established by the parties at the hearing. When any party is not represented by counsel, the Hearing Officer may examine and cross examine any witness to insure a clear and complete record. However, the Hearing Officer may not exclude exhibits or other testimony as a result of his examination unless all parties so agree;
- i) Except as otherwise provided, consider and rule as justice may require upon motions appropriate to an adjudicative proceeding.

## Section 103.201 Authority of Board Members and Board Assistants

Any Board Member or assistant to the Board Member present at the hearing may advise the Hearing Officer and may interrogate witnesses but shall not have the authority to rule on objections or motions or to overrule the Hearing Officer during the hearing.

## Section 103.202 Order of Enforcement Hearings

The following shall be the order of all enforcement hearings, subject to modification by the Hearing Officer for good cause:

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- a) Presentation, argument, and disposition of motions preliminary to a hearing on the merits of the matters raised in the complaint;
- b) Presentation of opening statements;
- c) Complainant's case in chief;
- d) Respondent's case in chief;
- e) Statements from interested citizens, as authorized by the Hearing Officer;
- f) Complainant's opening argument, which may include legal argument;
- g) Respondent's closing argument, which may include legal argument;
- h) Complainant's closing argument, which may include legal argument;
- i) Presentation and argument of all motions prior to submission of the transcript to the Board; and
- j) A schedule for submission of briefs to the Board.

## Section 103.203 Conduct of Hearing

- a) All hearings under this Part shall be public, and any person not a party and not otherwise a witness for a party may submit written statements relevant to the subject matter of the hearing. Any person submitting such a statement shall be subject to cross-examination by any party. If such person is not available for cross-examination upon timely request, the written statement may be stricken from the record. The Hearing Officer shall permit any person to offer reasonable oral testimony whether or not a party to the proceedings.
- b) All witnesses shall be sworn.
- c) Whenever a proceeding before the Board may affect the right of the public individually or collectively to the use of the community sewer or water facilities provided by a municipally owned or publicly regulated company, evidence of any social and economic impact which would result from restriction or denial of the right to use such facilities shall be admissible in such proceeding. The Hearing Officer shall allow all persons claiming an interest to intervene as parties pursuant to Section 103.142 and to present evidence of such social and economic impact.
- d) Upon the conclusion of the hearing, the Hearing Officer shall make a statement as to the credibility of witnesses. This statement shall be based upon his legal judgment and experience and shall indicate whether he finds credibility to be at issue in the case and if so, the reasons why. This statement shall become a part of the official record and shall be transmitted by the Hearing Officer to each of the parties in the case. No other statement shall be made or be appropriate unless otherwise ordered by the Board.

## Section 103.204 Admissible Evidence

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- a) The Hearing Officer shall receive evidence which is admissible under the rules of evidence as applied in the Courts of Illinois pertaining to civil actions except as these rules otherwise provide. The Hearing Officer may receive evidence which is material, relevant, and would be relied upon by reasonably prudent persons in the conduct of serious affairs provided that the rules relating to privileged communications and privileged topics shall be observed.
- b) When the admissibility of evidence depends upon an arguable interpretation of substantive law, the Hearing Officer shall admit such evidence.
- c) Upon stipulations of the parties, the Hearing Officer may order the record of any relevant prior proceeding before the Board or part thereof incorporated into the record of the present proceeding. Accordingly, the Hearing Officer shall direct the Clerk to physically incorporate the entire or appropriate portions of the record constituting such prior proceeding into the present proceeding.
- d) Relevant scientific or technical articles, treatises or materials may be introduced into evidence subject to refutation or disputation through any introduction of comparable documentary evidence or expert testimony.

## Section 103.205 Written Narrative Testimony

Written narrative testimony may be introduced by a party in a hearing only if provided to all other parties of record prior to the date of the hearing and only after the opposing parties have had an opportunity to object to all or portions of the written testimony and to obtain a ruling on said objections prior to its introduction. The person on whose behalf the testimony is submitted shall be available at hearing for cross-examination.

## Section 103.206 Official Notice

Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge and experience of the Board.

## Section 103.207 Viewing of Premises

Upon motion of any party or upon the Hearing Officer's own motion, the Hearing Officer and any Board Members present may view the premises in question to establish a more comprehensive record but no such viewing by less than the whole Board shall be made if any party objects. No stenographic record need be taken of what transpires at the viewing.

## Section 103.208 Admission of Business Records in Evidence

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the filing of the initial pleading or any amendment thereto, so long as no undue surprise results that cannot be remedied by a continuance.

## SUSPANT G: POST-HEARING PROCEDURES

## Section 103.220 Default

Failure of a party to appear on the date set for hearing or failure to proceed as ordered by the Board shall constitute a default. The Board shall thereafter enter such order as appropriate, as limited by the pleadings and based upon the evidence introduced at the hearing.

## Section 103.221 Transcript

- a) The Board shall provide for or arrange a court reporter who shall transcribe the entire hearing. Seven (7) copies, of which one (1) must be an original, of the transcript shall be filed with the Board within 15 days following the close of the hearing.
- b) Any party or witness may correct the transcript, as provided in Section 102.164.

## Section 103.222 Record

The transcript of the hearing approved by the Hearing Officer and all exhibits shall constitute the record. The Clerk shall certify the record to the Board when it is complete.

## Section 103.223 Briefs and Oral Argument

The parties may submit briefs to the Board within 14 days after receipt of final transcripts in Board offices or such other reasonable time as the Hearing Officer shall determine consistent with the Board's responsibility for expeditious decision and the needs of the parties under Section 103.202(k). Upon request at the time of the submission of briefs or on its own motion, the Board may permit oral argument by the parties before the whole Board.

## Section 103.224 Contents of Board Opinions and Orders

The Board shall prepare a written opinion and order for all final determinations which shall include:

- a) Findings of fact (with specific page references to principal supporting items of evidence in the record) and conclusions of law (supported by adequate reasoning) on all material issues.
- b) The final order or determination of the Board. The Board Order may include any or all of the following:
  - 1) A direction to cease and desist from violations of the Act

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Any writing or record, whether in the form of any entry in a book or otherwise made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of the act, transaction, occurrence, or event. To be admissible the writing or record shall have been made in the regular course of any business, provided it was the regular course of the business to make such a memorandum or record at the time of such an act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but shall not affect its admissibility. The term "business", as used in this rule, includes business, profession, occupation, and calling of every kind.

## Section 103.209 Examination of Adverse Party or Agent and Hostile Witnesses; Compelling Appearance Thereof at Hearing

- a) Upon the hearing of any action, any party thereto, or any person for whose immediate benefit the action is prosecuted or defended, or the officers, directors, managing agents or foreman of any party to the action, may be called and examined as if under cross-examination at the instance of any adverse party. The party calling for the examination may rebut the testimony given by counter testimony and may impeach the witness by proof of prior inconsistent statements.
- b) If the Hearing Officer determines that a witness is hostile or unwilling, the witness may be examined by the party calling him as if under cross-examination.
- c) The party calling an occurrence witness, upon the showing that he called the witness in good faith and is surprised by his testimony, may impeach the witness by proof of prior inconsistent statements.
- d) The appearance at the hearing of a party or a person who at the time of the hearing is an officer, director or employee of a party may be required by serving the party with a notice designating the person who is required to appear. If the party or person is a non-resident of the State, the Hearing Officer shall provide by order such terms and conditions in connection with his appearance at the hearing as are just, including payment of his reasonable expenses. The notice also may require production at the hearing of documents or tangible things.

## Section 103.210 Amendment and Variance

- a) Proof may depart from pleading and pleadings may be amended to conform to proof, so long as no undue surprise results that cannot be remedied by a continuance.
- b) At any time prior to commencement of hearing and prior to the close of hearing, the Hearing Officer may upon motion of a party permit supplemental pleading setting forth continuing transactions or occurrences which have continued or occurred subsequent to the date of



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- or of the Board's rules and regulations;
- 2) The imposition of money penalties in such amounts as appropriate in each case;
  - 3) The grant, denial, or revocation of a variance;
  - 4) The grant, denial, or revocation of a permit;
  - 5) The posting of sufficient performance bond or other security as provided by the Act to assure the correction of such violation within the time prescribed; and
  - 6) Such other order that may be appropriate.
- c) The Clerk shall publish the order and opinion with the vote of each Board Member recorded and shall notify the parties required to be notified of the hearing from which the order arose of such order and opinion.

## SUBPART H: RELIEF FROM FINAL ORDERS

## Section 103.240 Motion Subsequent to Entry of Final Order

Within 35 days after the adoption of a final order, any party may file a motion for rehearing or modification of the order or to vacate the order or for other relief. Response to said motion shall be filed within 14 days from the filing thereof. A motion filed within 35 days stays enforcement of the final order and the time for appeal from such order runs anew after the Board rules upon the motion. Failure of a party to appeal a final order or to file for appellate court review within 35 days of adoption of the final order waives all right to review except as set out in Section 103.241.

## Section 103.241 Relief from Section 103.224 Final Orders

- a) Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Board at any time of its own initiative or on the motion of any party and after such notice, if any, as the Board orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.
- b) On motion and upon such terms as are just, the Board may relieve a party or his legal representative from a final order, for the following:
  - 1) Newly discovered evidence which by due diligence could not have been discovered in time under Section 103.224; or
  - 2) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
  - 3) Void order.

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- 1) A motion under this section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the order was entered but is not a continuation of the proceeding. The motion must be supported by affidavit or other appropriate showing as to matters not of record. All parties to the motion shall be notified as provided by Section 103.123(a).
- 2) The motion shall be filed with the Board within one year after entry of the order except that a motion pursuant to subsection (b)(3) shall be filed within a reasonable time after entry of the order.

## SUBPART I: DECISION IN CASES INVOLVING RCRA PERMITS

## Section 103.260 Purpose, Scope and Applicability

- a) This Subpart applies when the Board finds in an interim order that an enforcement action involves issuance or modification of a RCRA permit;
- b) Enforcement actions which involve issuance or modification of a RCRA permit include those in which, to grant complete relief, it appears that the Board will have to:
  - 1) revoke a RCRA permit; or
  - 2) order a RCRA permit issued or modified; or
  - 3) enter an order which could require actions which would be different from the conditions of a RCRA permit or 35 Ill. Adm. Code 724 or 725; or
  - 4) enter an order directing facility closure or modification after a finding that a facility was operating without a RCRA permit and that one was required.
- c) These procedures provide methods by which the Board will formulate a compliance plan, and, if necessary, direct the issuance or modification of a RCRA permit.

## Section 103.261 Interim Order

- a) The Board will enter an interim order invoking the procedures of this Subpart on its own motion or on the motion of any party. Before the Board enters an interim order the parties must develop, through hearings or admissions pursuant to Section 103.162, a sufficient record to support the findings which the Board must make in paragraph (b).
- b) An interim order invoking the procedures of this Subpart will include:
  - 1) A finding or proposed finding of violation and any penalty or proposed monetary penalty; and
  - 2) A finding that the case is an enforcement action which involves or may involve the issuance or modification of a RCRA permit; and

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- 3) Joinder of the Agency if it is not already a party; and
- 4) A time schedule for filing by the Agency of a partial draft permit.
- c) The interim order is not a final order and may be appealed only with leave of the Board.

## Section 103.262 Joinder of Agency

If the Board directs that the Agency be joined, the Clerk will send, by messenger or by certified mail addressed to the Agency, a copy of the Board Order requiring joinder. Such mailing shall constitute service of process upon the Agency.

## Section 103.263 Draft Permit or Statement

- a) Within 60 days after entry of an interim order, the Agency shall file and serve on all parties either a partial draft permit or a statement that no RCRA permit needs to be issued or modified.
- b) The partial draft permit shall be in compliance with the requirements of 35 Ill. Adm. Code 705.141 and shall include such conditions as the Agency finds are necessary to correct the violations found in the interim order.
- c) The Agency may confer with other parties and enter into agreements as to the substance of the partial draft permit which it will recommend to the Board. The Agency shall disclose any such conferences or agreements in the proposed draft permit. Such agreements do not bind the Board.
- d) If the Agency issues a statement that no RCRA permit needs to be issued or modified, the remaining Subpart I procedures will not be followed, unless the Board determines otherwise.

## Section 103.264 Stipulated Draft Remedy

- a) The parties may agree to a stipulated draft remedy.
- b) A stipulated draft remedy shall include the following:
  - 1) Proposed mandatory orders which the parties agree should be included in the Board's final order, which may include one or more of the following:
    - A) An order to cease and desist conducting regulated activities;
    - B) An order to close a facility or unit;
    - C) An order to execute a post-closure care plan;
    - D) A compliance plan, including a time schedule to assure compliance with regulations in the shortest possible time;
    - E) An order to provide a performance bond or other financial assurance;

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- F) An order to apply for a permit or permit modification;
- G) An order revoking a permit.
- 2) A partial draft permit or statement as provided by Section 103.263.
- 3) A statement as to whether or not the stipulation is divisible for purposes of Board determinations.
- c) All parties, including the Agency, must sign the stipulated draft remedy before notice is given pursuant to Section 103.265.

## Section 103.265 Contents of Public Notice

- a) In addition to all parties, the Agency shall serve a copy of any partial draft permit on the United States Environmental Protection Agency at the following address:  
 Director, Waste Management Division  
 USEPA, Region V  
 230 South Dearborn Street  
 Chicago, IL 60604
- b) In addition to the requirements of the Act and Section 103.125, the Agency shall, at a minimum, give notice of the filing of a partial draft permit to the following persons:
  - 1) Federal agencies as designated by the United States Environmental Protection Agency;
  - 2) Illinois Department of Transportation;
  - 3) Illinois Department of Conservation;
  - 4) Illinois Department of Energy and Natural Resources;
  - 5) Illinois Department of Public Health;
  - 6) The Governor of any other State adjacent to the County in which the facility is located;
  - 7) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.
- c) In addition to the methods of notice by publication of Section 103.125, the Agency shall give notice by broadcast over at least one radio station in the area of the facility containing the information required by paragraphs (d)(2), (d)(4) and (d)(6) through (d)(8).
- d) A notice of a partial draft permit shall include the following information:
  - 1) The address of the Board office;
  - 2) Name and address of the respondent and, if different, of the facility subject to the enforcement action;
  - 3) A brief description of the business conducted at the facility and the activity which is the subject of the enforcement action;
  - 4) A statement of the violations the Board has found or has proposed to find;

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## POLLUTION CONTROL BOARD

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- 5) A statement that the Agency has filed a partial draft permit;
- 6) Name, address and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the partial draft permit and/or stipulated remedy; and
- 7)
  - A) A statement that a hearing will be held and that the record will remain open for written comments for 45 days after filing of the partial draft permit and/or stipulated remedy. The notice will include the address of the Board to which comments shall be mailed; and,
  - B) Notice of a hearing;
  - 8) A statement that the record in the action is available at the Board office for inspection, except those portions which are claimed or determined to be trade secrets, and that procedures are available whereby disclosure may be sought by the public (35 Ill. Adm. Code 120).
  - 9) A statement that enforcement actions are considered pursuant to Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1030 et seq.
  - 10) Any additional information considered necessary or proper.

## Section 103.266 Public Comment

Any person, including the United States Environmental Protection Agency, may comment on the partial draft permit or stipulated draft remedy within 45 days after it has been filed with the Board and notice given pursuant to Section 103.265.

## Section 103.267 Hearing

The following shall apply in addition to Sections 103.125(e) and (f):

- a) The Hearing Officer, after appropriate consultation with the parties, shall set a time and place for the hearing to be held not less than 30 days after the filing of the partial draft permit and/or stipulated remedy.
- b) The hearing shall be held in the county in which the facility is located, in the population center in such county closest to the facility.
- c) The Clerk in consultation with the Hearing Officer shall give notice of the hearing to the persons entitled to notice in Sections 103.125 and 103.265, and to any other persons who have commented, requested to comment or requested notice, and to any persons on a mailing list provided by the Agency.
- d) Notice shall be mailed not less than 30 days before the hearing.

## Section 103.268 Contents of Board Order

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- a) The Board will not enter an order which would require the issuance or modification of a RCRA permit unless the public notice, public comment and hearing procedures of this Subpart have been followed.
- b) If the Board determines that, to grant complete relief, it must order the issuance or modification of a RCRA permit, its final order will include an order directing the Agency to issue or modify the RCRA permit, which may take one of the following forms:
  - 1) An order to issue or modify a permit in conformance with a draft permit;
  - 2) An order to issue or modify a permit in conformance with a draft permit as modified by the Board order;
  - 3) Guidelines for issuance or modification of a permit in conformance with the order and other applicable regulations.
- c) If the order specifies a schedule leading to compliance with the Act and Board rules:
  - 1) Such schedule shall require compliance as soon as possible; and,
  - 2) The order may require the posting of sufficient performance bond or other security to assure correction of such violation within the time prescribed.

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**Section 103.APPENDIX A Old Rule Numbers Referenced**

The following table is provided to aid in referencing old Board rule numbers to section numbers pursuant to codification.

Chapter 1: Procedural Rules  
Part III: Enforcement Proceedings

Rule 301	35 Ill. Adm. Code Parts 101-107
Rule 302	Section 103.101
Rule 303	Section 103.120
Rule 304	Section 103.121
Rule 305	Section 103.122
Rule 306	Section 103.123
Rule 307	Section 103.124
Rule 308	Section 103.125
Rule 309	Section 103.140
Rule 310	Section 103.141
Rule 311	Section 103.142
Rule 312	Section 103.143
Rule 313	Section 103.160
Rule 314	Section 103.161
Rule 315	Section 103.162
Rule 316	Section 103.163
Rule 317	Section 103.200
Rule 318	Section 103.201
Rule 319	Section 103.202
Rule 320	Section 103.203
Rule 321	Section 103.204
Rule 322	Section 103.205
Rule 323	Section 103.206
Rule 324	Section 103.207
Rule 325	Section 103.208
Rule 326	Section 103.209
Rule 327	Section 103.210
Rule 328	Section 103.220
Rule 329	Section 103.221
Rule 330	Section 103.222
Rule 331	Section 103.223
Rule 332	Section 103.180
Rule 333	Section 103.224
Rule 334	Section 103.240
	Section 103.241

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**1) Heading of the Part: General Rules**

**2) Code citation: 35 Ill. Adm. Code 101**

**3) Section Numbers:**

101.100	Proposed Action:
101.102	New Section
101.104	New Section
101.106	New Section
101.108	New Section
101.110	New Section
101.112	New Section
101.114	New Section
101.200	New Section
101.202	New Section
101.300	New Section
101.302	New Section
101.304	New Section
101.306	New Section
101.308	New Section
101.400	New Section
101.402	New Section
101.403	New Section
101.404	New Section
101.406	New Section
101.408	New Section
101.500	New Section
101.502	New Section
101.504	New Section
101.506	New Section
101.508	New Section
101.510	New Section
101.512	New Section
101.514	New Section
101.516	New Section
101.518	New Section
101.520	New Section
101.522	New Section
101.600	New Section
101.602	New Section
101.604	New Section
101.606	New Section
101.608	New Section
101.610	New Section
101.612	New Section
101.614	New Section



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101.616 New Section  
101.618 New Section  
101.620 New Section  
101.622 New Section  
101.624 New Section  
101.626 New Section  
101.628 New Section  
101.700 New Section  
101.800 New Section  
101.802 New Section  
101.902 New Section  
101.904 New Section  
101.906 New Section  
101.908 New Section  
APPENDIX A  
ILLUSTRATION A  
ILLUSTRATION B  
ILLUSTRATION C  
ILLUSTRATION D  
ILLUSTRATION E  
ILLUSTRATION F  
ILLUSTRATION G  
ILLUSTRATION H  
ILLUSTRATION I  
ILLUSTRATION J  
ILLUSTRATION K  
APPENDIX B  
APPENDIX C  
APPENDIX D  
APPENDIX E  
ILLUSTRATION A  
ILLUSTRATION B

4) Statutory authority: Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act [415 ILCS 5].

5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules and adopt new procedural rules at Parts 101-130. Part 101 provides general procedural information to assist the public in matters before the Board. The proposed rules centralize definitions applicable to all Board procedures and clarify concepts, such as filing, service, and computation of deadlines. Significant changes from existing rules are proposed regarding representation of parties, including joinder and consolidation. In an effort to make the Board more accessible to the

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lay person, this Part proposes further explanation of motions, hearing procedures, and oral arguments. Part 101 is intended as a reference tool when using all other Parts of the Board's procedural rules.

- 6) Will these proposed rules replace emergency rules currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed rules contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of statewide policy objectives: This rulemaking imposes procedural mandates on units of local government to the extent they may appear before the Board.
- 11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

Clerk's Office  
Illinois Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601  
Phone #: 312/814/5931

Interested persons may request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620, or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

Additionally, the Board will hold two public hearings on these rules. The first hearing will be April 11, 2000 at 1:30 p.m. at:

Illinois Pollution Control Board  
Hearing Room 403  
600 S. Second Street  
Springfield, IL

The second hearing will be May 4, 2000 at 1:30 p.m. at:

James R. Thompson Center  
Room 9-040  
100 W. Randolph Street  
Chicago, IL

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12) Initial regulatory flexibility analysis:

- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking affects those small businesses, small municipalities, and not-for-profit corporations that appear before the Board.
- B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments do not require extensive reporting, bookkeeping or other procedures.
- C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney.

13) Regulatory agenda on which this rulemaking was summarized: January 2000

The full text of the proposed rule begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

PART 101  
GENERAL RULES

SUBPART A: GENERAL PROVISIONS

Section	Applicability
101.100	Severability
101.102	Repeals
101.104	Board Authority
101.106	Board Proceedings
101.108	Public Participation
101.110	Bias and Conflict of Interest
101.112	Ex Parte Communications
101.114	

SUBPART B: DEFINITIONS

Section	Definitions Contained in the Act
101.200	Definitions for Board's Procedural Rules
101.202	

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

Section	Computation of Time
101.300	Filing of Documents
101.302	Service of Documents
101.304	Incorporation of Documents by Reference
101.306	Statutory Decision Deadlines and Waiver of Deadlines
101.308	

SUBPART D: PARTIES, JOINER, AND CONSOLIDATION

Section	Appearances, Withdrawals, and Substitutions of Attorneys in
101.400	Adjudicatory Proceedings
101.402	Intervention of Parties
101.403	Joinder of Parties
101.404	Agency as a Party in Interest
101.406	Consolidation of Claims
101.408	Severance of Claims

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## SUBPART E: MOTIONS

Section  
 101.500 Filing of Motions and Responses  
 101.502 Motions Directed to the Hearing Officer  
 101.504 Contents of Motions and Responses  
 101.506 Motions Attacking the Sufficiency of the Petition, Complaint, or Other Pleading  
 101.508 Motions to Board Preliminary to Hearing  
 101.510 Motions to Cancel Hearing  
 101.512 Motions for Expedited Review  
 101.514 Motions to Stay Proceedings  
 101.516 Motions for Summary Judgment  
 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders  
 101.520 Motions for Reconsideration  
 101.522 Motions for Extension of Time

## SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

## Section

101.600 Hearings  
 101.602 Notice of Board Hearings  
 101.604 Formal Board Transcript  
 101.606 Informal Recordings of the Proceedings  
 101.608 Default  
 101.610 Duties and Authority of the Hearing Officer  
 101.612 Schedule to Complete the Record  
 101.614 Production of Information  
 101.616 Discovery  
 101.618 Admissions  
 101.620 Interrogatories  
 101.622 Subpoenas  
 101.624 Examination of Adverse, Hostile or Unwilling Witnesses  
 101.626 Information Produced at Hearing  
 101.628 Statements from Participants

## SUBPART G: ORAL ARGUMENT

## Section

101.700 Oral Argument

## SUBPART H: SANCTIONS

## Section

101.800 Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders

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## SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

101.802 Sanctions for Abuse of Discovery Procedures  
 Section  
 101.902 Motions for Reconsideration  
 101.904 Relief from and Review of Final Opinions and Orders  
 101.906 Judicial Review of Board Orders  
 101.908 Interlocutory Appeal

## APPENDIX A: Captions

ILLUSTRATION A Enforcement Case  
 ILLUSTRATION B Citizen's Enforcement Case  
 ILLUSTRATION C Variance  
 ILLUSTRATION D Adjusted Standard Petition  
 ILLUSTRATION E Joint Petition for an Adjusted Standard  
 ILLUSTRATION F Permit Appeal  
 ILLUSTRATION G Underground Storage Tank Appeal  
 ILLUSTRATION H Pollution Control Facility Siting Appeal  
 ILLUSTRATION I Administrative Citation  
 ILLUSTRATION J General Rulemaking  
 ILLUSTRATION K Site-specific Rulemaking  
 ILLUSTRATION L Appearance Form  
 ILLUSTRATION M Withdrawal of Appearance Form  
 ILLUSTRATION N Notice of Filing  
 ILLUSTRATION O Certificate of Service  
 ILLUSTRATION P Service by Non-Attorney  
 ILLUSTRATION Q Service by Attorney

AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) (415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7) and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Filled with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078, effective November 17, 1992; Old Part repealed, new Part adopted in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 101.100 Applicability

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- a) This Part sets forth the rules generally applicable to proceedings before the Illinois Pollution Control Board (Board), and should be read in conjunction with procedural rules for the Board's specific processes, found at 35 Ill. Adm. Code 103 through 130 and the Board's Administrative Rules, found at 2 Ill. Adm. Code 21/75. In the event of a conflict between the rules of this Part and those found in subsequent Parts, the more specific requirement applies.
- b) The provisions of the Code of Civil Procedure [735 ILCS 5/1-101] and the Supreme Court Rules [Ill. S. Ct. Rules] do not expressly apply to proceedings before the Board. However, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent.

**Section 101.102 Severability**

If any provision of this Part or its application to any person is adjudged invalid, such adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

**Section 101.104 Repeals**

All resolutions the Board adopted prior to December 31, 1996 that relate to the Board's procedural rules are repealed and are superseded by 35 Ill. Adm. Code 101-130.

**Section 101.106 Board Authority**

- a) The Board has the authority to determine, define and implement the environmental control standards applicable in the State of Illinois and may adopt rules and regulations in accordance with Title VII of this Act. [415 ILCS 5/3(b)]
- b) The Board has the authority to conduct hearings upon complaints charging violations of this Act or of regulations thereunder; upon petitions for variances; upon petitions for review of the Agency's denial of a permit in accordance with Title X of this Act; upon petition to remove a seal under Section 34 of this Act; upon other petitions for review of final determination which are made pursuant to the Act or Board rules and which involve a subject which the Board is authorized to regulate; and such other hearings as may be provided by rule. [415 ILCS 5/5(d)]
- c) In addition to subsections (a) and (b) of this Section, the Board has the authority to act as otherwise provided by law.

**Section 101.108 Board Proceedings**

- a) Board proceedings can generally be divided into two categories:

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- rulemaking proceedings and adjudicatory proceedings.
- b) The following are examples of Board rulemaking proceedings: Identical-In-Substance, Clean Air Act/Fast Track, Federally Required Rulemaking, General Rulemaking, and Site-Specific Rulemaking. Procedural rules for these types of proceedings can be found at 35 Ill. Adm. Code 102.
- c) The following are examples of Board adjudicatory proceedings: Permit Appeals, Underground Storage Tank Appeals, Pollution Control Facility Siting Appeals, Enforcement Proceedings, Administrative Citations, Variance Petitions, and Adjusted Standard Petitions. Procedural rules for these types of proceedings can be found at 35 Ill. Adm. Code 103 through 108.
- d) Board Decisions will be made at meetings open to the public. Except as provided in subsection (e) of this Section, 4 members of the Board constitute a quorum, and 4 affirmative votes are required to adopt a Board decision.
- e) At a hearing pursuant to Section 34(d) of the Act to determine whether a seal should be removed, at least one Board Member shall be present, and those Board Members present may render a final decision without regard to the requirements of Section 5(a) of the Act. [415 ILCS 5/34(d)]

**Section 101.110 Public Participation**

- a) General. The Board encourages public participation in all of its proceedings. The extent to which the law allows for such participation varies, depending on the type of Board proceeding involved, the party status of the person or persons seeking to participate, and the rules governing that type of proceeding. Public participation in particular proceedings may be more specifically delineated by Board or hearing officer order consistent with the provisions of applicable law and the Board's procedural rules.
- b) Party/Non-Party Status. The issue of who constitutes a proper party in each type of adjudicatory proceeding before the Board is addressed in the rules. A person who wishes to participate in a Board adjudicatory proceeding and is not a party will be deemed a participant and will have only those rights specifically provided in these rules.
- c) Amicus Curiae Briefs. Amicus curiae briefs may be filed in any adjudicatory proceeding by any interested person, provided permission is granted by the Board. Response briefs may be allowed by permission of the Board, but not as of right. Such briefs must consist of argument only and may not raise facts that are not in evidence in the relevant proceeding. Amicus curiae briefs, and any responses, will be considered by the Board only as time allows. Such briefs will not delay decision-making of the Board. See also Section 101.302(3) of

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this Part.

Section 101.112 Bias and Conflict of Interest

- No Board Member or Board employee may represent any other person in any Board proceeding.
- No former Board Member or Board employee may represent any other person in any Board proceeding in which he or she participated personally and substantially as a Board Member or Board employee, unless the Board and, as applicable, all parties or proponents in the proceeding consent in writing after disclosure of the participation. For purposes of subsections (a) and (b) of this Section, representation includes, but is not limited to, consulting on legal or technical matters, and Board employee means a person the Board employs on a full-time, part-time or contract basis.
- The Board, on its own motion or the motion of any party, may disqualify a hearing officer for bias or conflict of interest [5 ILCS 100/10-30(b) of the IAPA].

Section 101.114 Ex Parte Communications

- Adjudicatory Proceedings. Ex parte communications with respect to a pending adjudicatory proceeding are prohibited. (See definition of "ex parte communication" in Section 101.202 of this Part.) Information about a pollution source included in the record of a regulatory proceeding is not an ex parte communication with respect to any adjudicatory proceeding concerning the pollution source, but Board Members and Board employees will exercise caution to avoid prejudging the merits of the adjudicatory proceeding based on such information. For purposes of this Section, Board employee means a person the Board employs on a full-time, part-time, contract, or intern basis.
- Regulatory Proceedings. Board Members and Board employees should not engage in an ex parte communication designed to influence his or her action with respect to a pending regulatory proceeding. Whenever practicable, communications with respect to a pending regulatory proceeding must be in writing and addressed to the Clerk rather than to individual Board Members or Board employees.
- Nothing in this Section precludes Board Members or Board employees from receiving informal complaints about individual pollution sources, or forbids such administrative contacts as would be appropriate for judges and other judicial officers.
- In the event that an ex parte communication occurs, the Board Member or Board employee will make that communication part of the record of the proceeding. To make an oral ex parte communication part of the record, the substance of the oral communication, along with the identity of each person involved in the communication, will be either

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set forth in a memorandum and placed in the record or announced on the record at a public hearing.

SUBPART B: DEFINITIONS

Section 101.200 Definitions Contained in the Act

Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the definitions of the Act apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130.

Section 101.202 Definitions for Board's Procedural Rules

Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the following definitions also apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130:

"Act" means the Environmental Protection Act. [415 ILCS 5/1 et seq.]

"Adjudicatory proceeding" means an action of a quasi-judicial nature brought before the Board pursuant to authority granted to the Board under Section 5(d) of the Act or as otherwise provided by law. Adjudicatory proceedings include, but are not limited to, enforcement, variance, permit appeal, pollution control facility siting appeal, Underground Storage Tank (UST) Fund determination, water well set back exception, adjusted standard, and administrative citation proceedings. Adjudicatory proceedings do not include regulatory, quasi-legislative, or informational proceedings.

"Adjusted standard" or "AS" means an alternative standard granted by the Board in an adjudicatory proceeding pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 104 Subpart D. The adjusted standard applies instead of the rule or regulation of general applicability.

"Administrative citation" or "AC" means a citation issued pursuant to Section 31.1 of the Act by the Agency, or by a unit of local government acting as the Agency's delegate pursuant to Section 4(r) of the Act.

"Administrative citation review (appeal)" means a petition for review of an administrative citation filed pursuant to Section 31.1(d) of the Act. (See 35 Ill. Adm. Code 108)

"Affidavit" means a sworn, signed statement witnessed by a notary

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## public.

"Affidavit of service" means an affidavit that states that service of a document upon specified persons was made, and the manner in which, and date upon which, service was made.

"Agency" means the Illinois Environmental Protection Agency as established by Section 4 of the Act.

"Agency recommendation" means the document filed by the Agency pursuant to Sections 37(a) and 28-1(d)(3) of the Act in which the Agency provides its recommended disposition of a petition for variance or an adjusted standard. This includes, but is not limited to, a recommendation to deny, or a recommendation to grant with or without conditions. (See 35 Ill. Adm. Code 104.218 and 104.416)

"Amicus curiae brief" means a brief filed in a proceeding by any interested person. (See Sections 101.110 and 101.628 of this Part.)

"Applicant" means any person who submits, or has submitted, an application for a permit or for local siting approval pursuant to any of the authorities to issue permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of the Act.

"Article" means any object, material, device or substance, or whole or partial copy thereof, including any writing, record, document, recording, drawing, sample, specimen, prototype, model, photograph, culture, microorganism, blueprint or map. [415 ILCS 5/7-1]

"Attorney General" means the Attorney General of the State of Illinois and/or representatives thereof.

"Authorized representative" means any person who is authorized to act on behalf of another person by formal agreement or contract.

"Board" means the Illinois Pollution Control Board as created in Section 5 of the Act or, if applicable, its designee.

"Board decision" means an opinion or an order voted in favor of by at least four members of the Board at an open Board meeting except in a proceeding to remove a seal under Section 34(d) of the Act.

"Board designee" means an employee of the Board who has been given authority by the Board to carry out a function for the Board. (e.g., the Clerk, Assistant Clerk of the Board, or Hearing Officer.)

## POLLUTION CONTROL BOARD

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"Board meeting" means an open meeting held by the Board pursuant to Section 5(a) of the Act in which the Board makes its decisions and determinations.

"Board's procedural rules" means the Board's regulations set forth at 35 Ill. Adm. Code 101 through 130.

"Brief" means a written statement that contains a summary of the facts of a proceeding, the pertinent laws, and an argument of how the law applies to the facts supporting a position.

"CHAPP" means the Clean Air Act Permit Program, as adopted in Section 39.5 of the Act.

"Certificate of acceptance" means a certification, executed by a successful petitioner in a variance proceeding, in which the petitioner agrees to be bound by all terms and conditions that the Board has affixed to the grant of variance.

"Chairman" means the Chairman of the Board designated by the Governor pursuant to Section 5(a) of the Act.

"Citizen's enforcement proceeding" means an enforcement action brought before the Board pursuant to Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois.

"Clean Air Act" or "CAA" means the *Federal Clean Air Act, as now and hereafter amended*, 42 U.S.C. 7401 et seq. [415 ILCS 5/39.5.1]

"Clean Water Act" means the *Federal Clean Water Act*, 33 USC 1251 et seq.

"Clerk" means the Clerk of the Board.

"Complaint" means the initial filing that begins an enforcement proceeding pursuant to Section 31 of the Act and 35 Ill. Adm. Code 103.

"Compliance plan" means a detailed description of a program designed to achieve compliance with the Act and Board regulations.

"Copy" means any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article. [415 ILCS 5/7-1]

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"Counter-complaint" means a pleading that a respondent files setting forth a claim in its favor against a complainant. (See 35 Ill. Adm. Code 103.206.)

"Cross-complaint" means a pleading that a party files setting forth a claim in its favor against a co-party. (See 35 Ill. Adm. Code 103.206.)

"Cross-media impacts" means impacts that concern multiple environmental areas, such as air, land and/or water.

"Decision date" means the Board meeting immediately preceding the decision deadline.

"Decision deadline" means the last day of any decision period, as established by law, within which the Board is required to render a decision in an adjudicatory proceeding. (See Subpart C of this Part); (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions respectively.)

"Decision period" means the period of time established by the Act within which the Board is required to make a Board decision in certain adjudicatory proceedings. (See Subpart C of this Part); (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions, respectively.)

"Deinked stock" means paper that has been processed to remove inks, clays, coatings, binders and other contaminants. (415 ILCS 20/2.1)

"Delegated unit" means the unit of local government to which the Agency has delegated its administrative citation or other function pursuant to Section 4(r) of the Act.

"DNR" means the Illinois Department of Natural Resources.

"Discovery" means a pre-hearing process that can be used to obtain facts and information about the adjudicatory proceeding in order to prepare for hearing. The discovery tools include, but are not limited to, depositions upon oral and written questions, written interrogatories, production of documents or things, and requests for admission.

"DNS" means the Illinois Department of Nuclear Safety.

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"DOA" means the Illinois Department of Agriculture.

"Duplicitious" or "Duplicative" means the matter is identical or substantially similar to one brought before the Board or another forum.

"Environmental Management System Agreement" or "EMSA" means the agreement between the Agency and a sponsor, entered into under Section 52.3 of the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented, schedules to attain goals, and mechanisms for accountability.

"Enforcement proceeding" means an adjudicatory proceeding brought upon a complaint filed pursuant to Section 31 of the Act by the Attorney General, State's Attorney, or other persons, in which the complainant alleges violation of the Act or any rule or regulation or Board order thereunder or any permit or term or condition thereof.

"Ex parte communication" means a communication between a person who is not a Board Member or Board employee and a Board Member or Board employee that reflects on the substance of a pending Board proceeding and that takes place outside the record of the proceeding. Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications. [5 ILCS 100/10-60(d)] For purposes of this definition, "Board employee" means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section 101.114 of this Part.)

"Fast Track rulemaking" means a Clean Air Act rulemaking conducted pursuant to Section 28.5 of the Act.

"Federally required rule" means a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a State Implementation Plan), or Resource Conservation and Recovery Act, other than a rule required to be adopted under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or subsection (a) of Section 22.40. [415 ILCS 5/28.2]

"Filing" means the act of delivering a document or article into the custody of the Clerk with the intention of incorporating that document into a proceeding or record before the Board. The Clerk's Office is located at 100 West Randolph Street, Suite 11-500, Chicago, IL, 60601.

"Final order" means an order of the Board that terminates the

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proceeding leaving nothing further to litigate or decide and that is appealable to an appellate court pursuant to Section 41 of the Act. (See Subpart J of this Part.)

"Frivolous" means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

"Hearing" means a public proceeding conducted by a hearing officer where the parties and other interested persons, as provided for by law and the Board's procedural rules, present evidence and argument regarding their positions.

"Hearing officer" means a person licensed to practice law in the State of Illinois who presides over hearings and otherwise carries out record development responsibilities as directed by the Board.

"TAPA" means the Illinois Administrative Procedure Act [5 ILCS 100 et. seq.].

"Identical-in-substance rules (or regulations)" means *State regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois.* [415 ILCS 5/7.2]

"Initial filing" means the filing that initiates a Board proceeding and opens a docket. For instance, the initial filing in an enforcement proceeding is the complaint; in a permit appeal it is a petition for review; and in a regulatory proceeding it is the proposal.

"Innovative environmental measures" means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied. (See Part 106 Subpart F.)

"Inquiry hearing" means a hearing conducted by the Board for the purpose of seeking input and comment from the public regarding the need for a rulemaking proceeding in a specific area.

"Interlocutory appeal" means an appeal of a Board decision to the appellate court that is not dispositive of all the contested issues in the proceeding. (See Section 101.100(b)(4) of this Part.) An interlocutory appeal may also be the appeal of a hearing officer ruling to the Board. (See Section 101.518 of this Part.)

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"Intervenor" means a person, not originally a party to an adjudicatory proceeding, who voluntarily participates as a party in the proceeding with the leave of the Board. (See Section 101.402 of this Part.)

"Intervention" means the procedure by which a person, not originally a party to an adjudicatory proceeding, voluntarily comes into the proceeding as a party with the leave of the Board. (See Section 101.402 of this Part.)

"JCAR" means the Illinois General Assembly's Joint Committee on Administrative Rules established by the IAPA. [5 ILCS 100/5-90]

"Joinder" means the procedure by which the Board adds a person, not originally a party to an adjudicatory proceeding, as a party to the proceeding. (See Section 101.403 of this Part and 35 Ill. Adm. Code 103.206.)

"Mistomer" means a mistake in name, giving an incorrect name in a complaint or other document.

"Motion" means a request made to the Board or the hearing officer for the purposes of obtaining a ruling or order directing or allowing some act to be done in favor of the movant. (See definition of "Movant" in this Section.)

"Movant" means the person who files a motion.

"New pollution control facility" means: a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste. [415 ILCS 5/3.32(b)]

"Non-disclosable information" means information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; information concerning secret manufacturing processes or confidential data submitted by any person under this Act. [415 ILCS 5/7(a)]

"Notice list" means the list of persons in a regulatory proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony. (See definition of "Service List in this Section.") (See also 35 Ill. Adm. Code 102.422.)



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"Notice to reinstate" means a document filed that recommences the decision period after a negotiation waiver has been filed. Such notice will give the Board a full decision period in which to make a decision. (See Section 101.308 of this Part.)

"Oral argument" means a formal verbal statement of advocacy on a proceeding's legal questions made at a Board meeting with the Board's permission. (See Section 101.700 of this Part.)

"OSFW" means Office of the State Fire Marshal.

"OSFM appeal" means an appeal of an OSFM final decision concerning eligibility and deductibility made pursuant to Title XVI of the Act. [415 ILCS 5/57]

"Participant" means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding who is not a party, or a person who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the notice list of a particular proceeding, or testifying at hearing.

"Participant in a CRAPP Comment Process" means a person who takes part in a Clean Air Act Permit Program (CAAPP) permit hearing before the Agency or comments on a draft CAAPP permit.

"Party" means the person by or against whom a proceeding is brought.

"Party in interest" means the Agency when asked to conduct an investigation pursuant to Section 30 of the Act during an ongoing proceeding. (See Section 101.404 of this Part.)

"permit appeal" means an adjudicatory proceeding brought before the Board pursuant to Title X of the Act.

"Person" means any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns. [415 ILCS 5/3.26]

"Petition" means the initial filing in an adjudicatory proceeding other than an enforcement proceeding, including permit appeals, OSFM appeals, OST appeals, appeals of pollution control facility siting decisions, variances and adjusted standards.

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"Pilot project" means an innovative environmental project that covers one or more designated facilities, designed and implemented in the form of an EMSA. (See Section 52.3 of the Act.)

"Pollution control facility" means any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under Metropolitan Water Reclamation District Act. The following are not pollution control facilities:

waste storage sites regulated under 40 CFR, 761.42;

sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person;

sites or facilities at which the State is performing removal or remedial action pursuant to Section 22.2 or 55.3;

abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due to the construction and installation of underground pipes, lines, conduit or wires off of the premises of a public utility company which are conducted by a public utility;

sites or facilities used by any person to specifically conduct a landscape composting operation;

regional facilities as defined in the Central Midwest Interstate Low-Level Radioactive Waste Compact;

the portion of a site or facility where coal combustion wastes are stored or disposed of in accordance with subdivision (r)(2) or (r)(3) of Section 21;

the portion of a site or facility used for the collection, storage or processing of waste tires as defined in Title XIV;

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the portion of a site or facility used for treatment of petroleum contaminated materials by application onto or incorporation into the soil surface and any portion of that site or facility used for storage of petroleum contaminated materials before treatment. Only those categories of petroleum listed in paragraph (5) of subsection (a) of Section 22.18(b) are exempt under this subdivision:

the portion of a site or facility where used oil is collected or stored prior to shipment to a recycling or energy recovery facility, provided that the used oil is generated by households or commercial establishments, and the site or facility is a recycling center or a business where oil or gasoline is sold at retail;

the portion of a site or facility utilizing coal combustion waste for stabilization and treatment of only waste generated on that site or facility when used in connection with response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Resource Conservation and Recovery Act of 1976, or the Illinois Environmental Protection Act or as authorized by the Agency;

the portion of a site or facility accepting exclusively general construction or demolition debris, located in a county with a population over 700,000, and operated and located in accordance with Section 22.38 of this Act. [415 ILCS 5/3.32(a)]

"Pollution control facility siting appeal" means an appeal of a decision made by a unit of local government filed pursuant to Section 40.1 of the Act with the Board.

"Postconsumer material" means paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth after the waste has been passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cor dage. Additionally, it includes all paper, paperboard, and other fibrous wastes that are diverted or separated from the municipal solid waste stream. [415 ILCS 20/3(f)(2)(i), (ii)] (See also definition of "Recycled Paper" in this Section.)

"Preemptory rulemaking" means any rulemaking which is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions which preclude compliance with the general rulemaking requirements of Section 5-40 of the IAPA and which preclude

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the exercise by the Board as to the content of the rule it is required to adopt. [5 ILCS 100/5-50]

"Prehearing conference" means a meeting held in an adjudicatory case to determine the status of the proceedings. A prehearing conference may also be a meeting held in a regulatory proceeding prior to the hearing, the purposes of which shall be to maximize understanding of the intent and application of the proposal, if possible, and to attempt to identify and limit the issues of disagreement among participants to promote efficient use of time at hearing. [415 ILCS 5/27(d).] (See 35 Ill. Adm. Code 102.404 and 102.406.)

"Proceeding" means an action conducted before the Board pursuant to authority granted under Section 5 of the Act or as otherwise provided by law. Board proceedings are of two types: quasi-legislative (e.g., rulemakings and inquiry proceedings) and quasi-judicial (adjudicatory proceedings).

"Proponent" means any person, not including the Board or its staff, who submits a regulatory proposal to the Board for the adoption, amendment, or repeal of a regulation.

"Provisional variance" means a short term variance sought by a party and recommended by the Agency pursuant to Section 35(b) of the Act. (See 35 Ill. Adm. Code 104.308.)

"Public comment" means information submitted to the Board during a pending proceeding either by oral statement made at hearing or written statement filed with the Board.

"Qualitative description" means a narrative description pertaining to attributes and characteristics.

"Quantitative description" means a numerically based description pertaining to attributes and characteristics.

"RCRA variance" means a variance from a RCRA rule or a RCRA permit required pursuant to Section 21(f) of the Act.

"Record" means the official collection, as kept by the Clerk, of all documents and exhibits including pleadings, transcripts, and orders filed during the course of a proceeding.

"Recycled paper" means paper which contains at least 50% recovered paper material. The recovered paper material must contain at least 40% deinked stock or postconsumer material; beginning July 1, 2000,

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must contain at least 45% deinked stock or postconsumer material. (See also "Postconsumer material" in this Section.)

"Registered agent" means a person registered with the Secretary of State for the purpose of accepting service for any entity, or a person otherwise authorized in writing as an agent for the purpose of accepting service for that entity.

"Regulatory hearing" or "proceeding" means a hearing or proceeding held pursuant to Title VII of the Act or other applicable law with respect to regulations.

"Regulatory relief mechanisms" means variances, provisional variances and adjusted standards. (35 Ill. Adm. Code 104.)

"Representing" means, for purposes of Part 130, *describing, depicting, containing, constituting, reflecting or recording*. [415 ILCS 5/7.1]

"Requester" means, for purposes of Part 130, the person seeking from the agency the material claimed or determined to be a trade secret. [415 ILCS 5/7.1]

"Resource Conservation and Recovery Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.).

"Rule or regulation of general applicability" means a rule or regulation adopted by the Board pursuant to Title VII of the Act or other applicable law, with such regulation applicable to all persons not explicitly exempted either by the regulation or by associated site-specific regulation or adjusted standard.

"Rulemaking" or "rulemaking proceeding" means a proceeding brought under Title VII of the Act or other applicable law for the purpose of adoption, amendment, or repeal of a regulation.

"Sanction" means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board's procedural rules, Board orders or hearing officer orders. (See also Subpart H of this Part.)

"SDWA" means the federal Safe Drinking Water Act (42 USC 300f et seq.).

"Service" means delivery of documents upon a persons. (See Section 101.300(c) and 101.304 of this Part.)

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"Service list" means the list of persons designated by the hearing officer or Clerk in a regulatory or adjudicatory proceeding upon whom participants must serve motions, prefiled questions and prefiled testimony and any other documents that the participants file with the clerk unless the hearing officer otherwise directs. (See definition of Notice list in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Severance" means the separation of a proceeding into two or more independent proceedings, each of which terminates in a separate, final judgment.

"Site-specific rule or regulation" means a proposed or adopted regulation, not of general applicability, that applies only to a specific facility, geographic site, or activity. (See 35 Ill. Adm. Code 102.208.)

"Sponsor" means the proponent of a pilot project that enters into an EMOA with the Agency.

"State enforcement proceeding" means an enforcement proceeding, other than a citizen's enforcement proceeding, that is brought pursuant to Section 31(a) of the Act.

"Stay" means a temporary suspension of the regular progress of a proceeding pursuant to an order of the Board or by operation of law. (See Section 101.514 of this Part.)

"Subpoena" means a command to appear at a certain time and place to give testimony upon a certain matter.

"Subpoena duces tecum" means a document that compels the production of specific documents and other items at a specified time and place.

"Summary judgment" means the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (See Section 101.516 of this Part.)

"Third party" means a person who is a party to a proceeding but was not one of the parties in the initial proceeding.

"Third party complaint" means a pleading that a respondent files setting forth a claim in its favor against a person who is not already

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a party to the proceeding. (See 35 Ill. Adm. Code 103.206.)

"Trade secret" means the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measure to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes. [415 ILCS 5/3.48]

"Trade secret petition" means a petition filed pursuant to the Board's procedural rules (35 Ill. Adm. Code 130) regarding trade secret information.

"Transcript" means the official recorded testimony from a hearing.

"USEPA" means the United States Environmental Protection Agency.

"Underground storage tank appeal" or "UGT appeal" means an appeal of an Agency final decision made pursuant to Title XVI of the Act.

"UGT" means underground storage tank.

"Variance" means a temporary exemption from any specified regulation, requirement or order of the Board granted to a petitioner by the Board pursuant to Title IX of the Act upon presentation of adequate proof that compliance with the rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship. [415 ILCS 5/35(a)]

"Waiver" means the intentional relinquishing of a known right, usually with respect to hearing before the Board or entry of a Board decision within the decision period. (See also Section 101.308 of this Part.)

"Web site" means the Board's computer-based informational service accessed on the Internet at <http://www.ipcb.state.il.us>.

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE  
OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

Section 101.300 Computation of Time

- a) Computation of Time. Computation of any period of time prescribed in the Act, other applicable law, or these rules will begin with the

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first calendar day following the day on which the act, event or development occurs and will run until the close of business on the last day, or the next business day if the last day is a Saturday, Sunday or national or State legal holiday.

- b) Time of Filing. Documents will be considered filed when they are filed in conformance with the requirements found in Section 101.302 of this Part and any other filing requirements specifically set out in the other Parts of these rules.

- 1) If filed in person, by messenger service or mail delivery service other than U.S. Mail, documents are considered filed when they are received in the Office of the Clerk.
- 2) For purposes of filing deadlines, documents filed by U.S. Mail will be deemed filed when they are postmarked, provided all filing requirements are met as set forth in Section 101.302 of this Part.
- 3) Documents filed other than those through U.S. Mail and received in the Office of the Clerk after 4:30 p.m. will be marked as filed the following business day. The Clerk will record the appropriate filing date on all filed documents.
- 4) For purposes of Board decision deadlines, time does not begin until the date on which the initial filing is date-stamped by the Clerk.
- c) Time of Service. In the case of personal service, service is deemed complete on the date personal delivery was effectuated. In the case of facsimile transmission, service is deemed complete on the date of a complete and proper transmittal (facsimile filings are only allowed in accordance with Section 101.302(d) of this Part). In the case of service by registered or certified mail, or by messenger service, service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt. In the case of service by U.S. Mail, service is presumed complete four days after mailing. Such presumption can be rebutted by proper proof.
- d) Date of Board Decision.
  - 1) For purposes of statutory decision deadline proceedings, the date of the Board decision is the date of the Board meeting where a final opinion and order of the Board was adopted by the vote of at least four Board members.
  - 2) For purposes of appeal, the date of the Board decision is the date of service of the final opinion and order by the Board upon the appealing party. Or, in the event of a timely filed motion for reconsideration filed pursuant to Section 101.520 of this Part, the date of the Board order ruling upon the motion is the date of service by the Board upon the appealing party.

Section 101.302 Filing of Documents

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- a) This Section contains the Board's general filing requirements. Additional requirements may exist for specific proceeding elsewhere in these rules. The Clerk will refuse for filing any document that does not comply with the minimum requirements below.
- b) All documents filed with the Board must be filed with the Clerk's Office. Service on a hearing officer does not constitute filing with the Board. Documents may be filed at:

Pollution Control Board, Attn: Clerk  
 100 West Randolph Street  
 James R. Thompson Center, Suite 11-500  
 Chicago, Illinois 60601-3218

- c) Documents may be filed by U.S. Mail or other mail delivery service, in person or by messenger.
- d) Filing by electronic transmission or facsimile will only be allowed with the prior approval of the Clerk of the Board or hearing officer assigned to the proceeding.
- e) The following initial filings require filing fees and will only be considered filed when accompanied by the appropriate fee, which may be paid in the form of government voucher, money order, or check made payable to the Illinois Pollution Control Board, but which may not be paid in cash:
  - 1) Petition for Site-Specific Regulation, §75;
  - 2) Petition for Variance, §75;
  - 3) Petition for Review of Agency Permit Decision, UST Decision, or any other appeal filed pursuant to Section 40 of the Act, §75;
  - 4) Petition to Review Pollution Control Facility Siting Decisions, pursuant to Section 40.1 of the Act, §75; and
  - 5) Petition for Adjusted Standard, pursuant to Section 28.1 of the Act, §75.
- f) All documents filed must be served in accordance with Subpart C of this Part.
- g) All documents filed by parties with the Board must be typed in at least 12 pitch font, should contain the relevant proceeding caption and number and must be submitted on 8 1/2 x 11 inch recycled paper as defined in Subpart B of this Part.
- h) Unless the Board or its procedural rules provide otherwise, all documents must be filed with a signed original and 9 duplicate copies (10 total), except that documents specifically directed to the assigned hearing officer, such as requests to admit, discovery motions, interrogatories, and answers, and subpoenas must be filed with the Clerk with a signed original and 4 copies (5 total), or as the hearing officer orders.
- i) Non-Conforming Exhibits. When possible, exhibits must be reduced to conform to 8 1/2 X 11 inch recycled paper. However, one

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## POLLUTION CONTROL BOARD

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- j) Page Limitation. No motion, brief in support of motion, or brief may exceed 30 pages, and no amicus curiae brief may exceed 20 pages, without prior approval of the Board or hearing officer. These limits do not include appendices containing relevant material.

## Section 101.304 Service of Documents

- a) Service Requirements. This Section contains the Board's general service requirements. However, the more specific Part for a proceeding type may contain additional requirements.
- b) Duty to Serve. Parties in Board adjudicatory proceedings are responsible for service of all documents they file with the Clerk's Office. Proof of service of initial filings must be filed with the Board upon completion of service.
- c) Method of Service. Service may be effectuated by U.S. Mail or other mail delivery service, in person, by messenger, or by facsimile, as prescribed in Section 101.302(d), except for service of enforcement complaints and administrative citations which must be made personally, by registered or certified mail, or by messenger service. Proof of service of enforcement complaints and administrative citations must be filed with the Board upon completion of service.
- d) Affidavit or Certificate of Service. A proceeding is subject to dismissal, and parties are subject to sanctions in accordance with Section 101.800 of this Part, if service is not timely made. Proof of proper service is the responsibility of the party filing and serving the document. An affidavit of service or certificate of service must accompany all filings of all parties. A sample form of the Affidavit of service and certificate of service is available at the Board's Offices (the locations of the Board's Offices are listed at 2 Ill. Adm. Code 215/5.115) and may be obtained electronically at the Board's Web site.
- e) Service of Amicus Curiae Briefs. Any person who files an amicus curiae brief with the Board in any proceeding must serve copies of that brief on all parties in accordance with this Section.
- f) Service of Comments of Participants in an Adjudicatory Proceeding. Participants will not be required to serve their comments upon the parties to the proceeding. The Clerk's Office will serve all comments filed by participants upon all parties to the proceeding and the hearing officer. The Board will consider such comments as time and the Act or other applicable law allow.
- g) Service on State Agencies. Service must be at the addresses listed below unless a specific person has an appearance on file with the

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## Board.

- 1) Service on the Illinois Environmental Protection Agency (Agency).  
The Agency must be served at the following address:

Division of Legal Counsel  
Illinois Environmental Protection Agency  
P.O. Box 19276  
Springfield, IL 62794-9276

- 2) Service on Office of State Fire Marshal (OSFM). The OSFM must be served at:

Division of Petroleum and Chemical Safety  
Office of the State Fire Marshal  
1035 Stevenson Dr.  
Springfield, IL 62703

- 3) Service on the Illinois Attorney General. The Office of the Attorney General must be served at:

Division Chief of Environmental Enforcement  
Office of the Attorney General  
188 West Randolph St., 20th Floor  
Chicago, IL 60601

- 4) Service on the Illinois Department of Natural Resources (DNR) must be served at:

Office of Legal Services  
Illinois Department of Natural Resources  
524 S. Second St.  
Springfield, IL 62701-1787

- 5) Service on the Illinois Department of Transportation (IDOT). IDOT must be served at:

Office of Chief Counsel  
DOT Administration Building  
2300 S. Dirksen Parkway, Room 300  
Springfield, IL 62764

- 6) Service on Region V of the United States Environmental Protection Agency (USEPA). USEPA Region V must be served at:

USEPA, Region V  
230 South Dearborn St.

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## Section 101.306 Incorporation of Documents by Reference

- a) Upon the separate written request of any person or on its own initiative, the Board or hearing officer may incorporate materials from the record of another Board docket into any proceeding. The person seeking incorporation must file with the Board 9 copies of the material to be incorporated. The person seeking incorporation must demonstrate to the Board or the hearing officer that the material to be incorporated is relevant to the proceeding. Notice of the request must be given to all identified participants or parties by the person seeking incorporation.
- b) The Board will give the incorporated matter the appropriate weight in light of the following factors: the standard of evidence under which the material was previously presented to the Board; the present purpose for incorporating the material; and the past and current opportunity for cross-examination of the matters asserted within the incorporated material.

## Section 101.308 Statutory Decision Deadlines and Waiver of Deadlines

- a) Petitions in the following proceedings each have a 120-day statutory decision deadline: Variances (Section 38 of the Act), Permit Appeals and USR appeals (Section 40 of the Act), and Pollution Control Facility Siting Review (Section 40.1 of the Act). Other adjudicatory proceedings may be subject to decision deadlines as provided by law.
- b) Where the petitioner does not waive the decision deadline, the Board will proceed expeditiously to establish all hearing and filing requirements. Failure to follow Board requirements on such deadlines will subject the party to sanctions pursuant to Subpart H of this Part. This Section will be strictly construed where there is a decision deadline unless the Board receives a waiver as set out below.
- c) All waivers of a deadline for Board action must be filed as a separate document. Waivers must be clearly titled and state which type of waiver it is, identify the proceeding by name and docket number, and be signed by the party or by his authorized representative or attorney. A waiver of a statutory deadline does not preclude the Board from issuing an opinion or order prior to any decision deadline.
  - 1) Open Waiver. Waives the decision deadline completely and unequivocally.
  - 2) Negotiation Waiver. Waives the decision deadline until such time as the petitioner elects to reinstate the decision period by filing a notice to reinstate. Upon proper filing of the notice, the decision period is reinstated. In accordance with Section 101.300(b)(4) of this Part, the decision period recommences as of

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- the date the notice to reinstate is filed with the Board.
- 3) Time Certain Waiver. Waives the decision deadline until a time certain. The time certain may be expressed in length of days or to a specific calendar date. If expressed in length of days, day one will be the first day after the date upon which the current time clock expires. If the petitioner files a time certain waiver before the hearing date, the waiver must be for at least 120 days. If the extension is not renewed for at least 90 days prior to the decision deadline, the Board will set the matter for hearing.

## SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

## Section 101.400 Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory Proceedings

- a) Appearances. A person who is a party in a Board adjudicatory proceeding may appear as follows:
  - 1) Individuals may appear on their own behalf or through an attorney-at-law licensed and registered to practice law. (Section 1 of the Attorney Act [705 ILCS 205/1])
  - 2) When appearing before the Board, any person other than individuals must appear through an attorney-at-law licensed and registered to practice law. (Section 1 of the Corporation of Law Prohibition Act [705 ILCS 220/1] and Section 1 of the Attorney Act [705 ILCS 205/1])
  - 3) Attorneys who are licensed to practice in a state other than Illinois and who are not licensed and registered to practice in the State of Illinois may request to appear pro hac vice on a particular matter on a motion filed with the Board.
  - 4) Any attorney appearing in a representative capacity must file a separate written notice of appearance with the Clerk, together with proof of service and notice of filing of the appearance on all parties in the proceeding. Law firms, the Agency, and the Attorney General's Office when appearing before the Board must designate a lead attorney for purposes of phone and mail contact pertaining to the proceeding.
  - 5) Any person appearing before the Board may appear in a special limited capacity to contest jurisdiction.
- b) Withdrawals. An attorney who has appeared in a representative capacity and who wishes to withdraw from that representation must file a notice of withdrawal with the Clerk, together with proof of service and notice of filing on all parties or their representatives.
- c) Substitution. Any attorney who substitutes for an attorney of record must file a written appearance pursuant to subsection (a) of this Section. That appearance must identify the attorney for whom the

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- substitution is made. However, no attorney will be considered withdrawn from a proceeding until a formal withdrawal is filed in accordance with subsection (b) of this Section.
- d) Any person may appear on behalf of himself or others in a rulemaking proceeding in accordance with 35 Ill. Adm. Code 102.100(b).

## Section 101.402 Intervention of Parties

- a) The Board may permit any person to intervene in any adjudicatory proceeding. If a person seeks to intervene in an adjudicatory proceeding, the person must file a motion to do so with the Clerk and serve a copy of the motion on all parties to the proceeding. The motion must set forth the grounds for intervention. Each of the parties to the proceeding may file a response to the motion within 14 days after service.
- b) In determining whether to grant a motion to intervene, the Board will consider the timeliness of the motion and whether intervention will unduly delay or materially prejudice the proceeding or otherwise interfere with an orderly or efficient proceeding.
- c) Subject to subsection (b) of this Section, the Board will permit any person to intervene in any adjudicatory proceeding if:
  - 1) the person has an unconditional statutory right to intervene in the proceeding; or
  - 2) it may be necessary for the Board to impose a condition on the person.
- d) Subject to subsection (b) of this Section, the Board may permit any person to intervene in any adjudicatory proceeding if:
  - 1) the person has a conditional statutory right to intervene in the proceeding;
  - 2) the person may be materially prejudiced absent intervention; or
  - 3) the person is so situated that the person may be adversely affected by a final Board order.
- e) An intervenor will have all the rights of an original party to the adjudicatory proceeding, except that the Board may limit the rights of the intervenor as justice may require. Such limits may include, but are not limited to, providing that: the intervenor is bound by Board and hearing officer orders already issued or by evidence already admitted; that the intervenor does not control any decision deadline; and that the intervenor cannot raise issues that were raised or might more properly have been raised at an earlier stage of the proceeding.

## Section 101.403 Joinder of Parties

- a) The Board, on its own motion or the motion of any party, may add a person as a party to any adjudicatory proceeding if:
  - 1) a complete determination of the controversy cannot be had without

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- the presence of the person who is not already a party to the proceeding; or
- 2) it may be necessary for the Board to impose a condition on the person who is not already a party to the proceeding.
  - b) If a party to an adjudicatory proceeding seeks to move the Board to add a party pursuant to subsection (a) of this Section, the movant must file the motion with the Clerk and serve a copy of the motion on all other parties to the proceeding and the person sought to be added. The motion must set forth the grounds for joinder. The movant also must serve the person sought to be added with a copy of the initial filing in the proceeding, as amended, and all Board orders and hearing officer orders to date in the proceeding.
  - c) The nonmoving parties and the person sought to be added each may file a response to the motion within 14 days after the respective service described in subsection (b) of this Section.

**Section 101.404 Agency as a Party in Interest**

Pursuant to Section 30 of the Act, the Board may request that the Agency investigate any alleged violation of the Act, the regulations, any permit granted by the Agency, or any term or condition of any such permit and any such other investigations as the Board may deem advisable. Upon such request, the Board may designate the Agency as a party in interest in any ongoing proceeding in that matter. The designation of the Agency as a party in interest does not require the Agency to take a position on the merits of the proceeding.

**Section 101.406 Consolidation of Claims**

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings where the burdens of proof vary.

**Section 101.408 Severance of Claims**

Upon motion of any party or on the Board's own motion, in the interest of convenient, expeditious, and complete determination of claims, and where no material prejudice will be caused, the Board may sever claims involving any number of parties.

## SUBPART B: MOTIONS

**Section 101.500 Filing of Motions and Responses**

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- a) The Board may entertain any motion the parties wish to file that is permissible under the Act or other applicable law, these rules, or the Illinois Code of Civil Procedure.
- b) All motions must be in writing, unless made orally on the record during a hearing, and must state whether directed to the Board or to the hearing officer. Motions that should be directed to the hearing officer are set out in Section 101.502 of this Part. All motions should be filed and served in conformance with Subpart C of this Part.
- c) Motions may be filed at any time unless otherwise specifically provided.
- d) Within 7 days after service of a motion, a party may file a response to the motion. If no response is filed, such party will be deemed to have waived objection to the granting of the motion, but such waiver of objection does not bind the Board or the hearing officer in its disposition of the motion. Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 7 day response period except in deadline driven proceedings where no waiver has been filed. Parties may request that the Board grant more time to respond by filing a motion for extension of time.
- e) The moving person will not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice. A motion for leave to file a reply must be filed with the Board within 7 days after service of the response.

**Section 101.502 Motions Directed to the Hearing Officer**

- a) The hearing officer has the authority to rule on all motions that are not dispositive of the proceeding. Examples of motions that hearing officers may not rule upon are motions to dismiss, motions to decide a proceeding on the merits, motions to strike any claim or defense for insufficiency or want of proof, motions claiming lack of jurisdiction, motions for consolidation, motions for summary judgment, and motions for reconsideration. The duties and authorities of the hearing officer are further set out in Section 101.610 of this Part.
- b) An objection to a hearing officer ruling or any oral motion to the Board made at hearing will be deemed waived if not filed within 7 days after the Board receives the hearing transcript.
- c) Unless otherwise ordered by the Board, neither the filing of a motion, the certification of a question to the Board, nor any appeal to the Board of a hearing officer order will stay the proceeding or extend the time for the performance of any act. Unless otherwise provided, all hearing officer orders will remain in effect during the pendency of any appeal to the Board.

**Section 101.504 Contents of Motions and Responses**

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All motions and responses must clearly state the grounds upon which the motion is made and must contain a concise statement of the position or relief sought. Facts asserted that are not of record in the proceeding must be supported by oath or affidavit. A brief or memorandum in support of the motion or response may be included.

#### Section 101.506 Motions Attacking the Sufficiency of the Petition, Complaint, or Other Pleading

All motions to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board must be filed within 21 days after the service of the challenged document, unless the Board determines that material prejudice would result.

#### Section 101.508 Motions to Board Preliminary to Hearing

Motions that a party desires the Board to rule on before hearing should be filed 21 days prior to the regularly scheduled Board meeting before the noticed hearing date. Any motion filed after the above prescribed time will be considered by the Board if time permits.

#### Section 101.510 Motions to Cancel Hearing

- a) Time to file. Unless the Board or the hearing officer orders otherwise the hearing officer may grant motions to cancel hearings that are filed no fewer than 10 days or, if all parties agree to the motion, 5 days before the scheduled hearing date. The hearing officer may grant any such motion filed after the prescribed time only if the movant demonstrates that the movant will suffer material prejudice if the hearing is not canceled.
- b) Contents. All motions to cancel a hearing must set forth a proposed date to reschedule the hearing and must be supported by an affidavit of the person or persons with knowledge of the facts that support the motion. The affidavit must include the factual basis for the request to cancel and a complete status report that describes the progress of the proceeding and sets forth the number of cancellation requests previously granted to the movant. The hearing officer will grant the motion only if the movant demonstrates that the request to cancel is not the result of the movant's lack of diligence.
- c) In a proceeding for which there is a decision deadline, the hearing officer will deny a motion to cancel a hearing if the decision deadline does not allow enough time for the Board to reschedule the hearing, provide the required notice of the rescheduled hearing, complete the hearing, and deliberate and decide the matter.
- d) If the hearing officer grants a motion to cancel a hearing, the hearing officer will revise the schedule to complete the record in

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accordance with Section 101.612 of this Part. The hearing officer also will file the revised schedule with the Clerk and serve a copy of the revised schedule on all parties in accordance with Subpart C of this Part.

- e) If the hearing officer grants a motion to cancel a hearing, the Board may assess the movant the actual cost of newspaper notice of the rescheduled hearing.
- f) If a party files a motion to cancel a hearing less than two business days before the scheduled hearing, the Board may assess the movant the cancellation fee of the court reporter.

#### Section 101.512 Motions for Expedited Review

- a) Motions for expedited review must be directed to the Board. All motions for expedited review must contain a complete statement of the facts and for reasons for the request and must be accompanied by an oath or affirmation attesting that the reasons and facts cited are true.
- b) In acting on a motion for expedited review, the Board will, at a minimum, consider all statutory requirements and whether material prejudice will result from the motion being granted or denied.
- c) The Board will grant a motion for expedited review consistent with available resources and decision deadlines.

#### Section 101.514 Motions to Stay Proceedings

- a) Motions to stay a proceeding must be directed to the Board and must be accompanied by sufficient information detailing why a stay is needed, and in decision deadline proceedings, by a waiver of any decision deadline. A status report detailing the progress of the proceeding must be included in the motion. (See also Section 101.308 of this Part.)
- b) If the motion to stay is granted, at the close of the stay, the parties must file a status report in accordance with Subpart C of this Part. Additional requests for stay of the proceedings must be directed to the hearing officer.

#### Section 101.516 Motions for Summary Judgment

- a) Any time after the opposing party has appeared (or after the expiration of time within which any party is required to appear), but no fewer than 30 days prior to the regularly scheduled Board meeting before the noticed hearing date, a party may move the Board for summary judgment for all or any part of the relief sought. Any response to a motion for summary judgment must be filed within 14 days after service of the motion for summary judgment.

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- b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, show that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.
- c) Any party wishing to cancel a hearing pending decision on a motion for summary judgment must file a motion to cancel hearing pursuant to Section 101.510 of this Part.
- d) Any issue raised in a motion for summary judgment not ruled on prior to the commencement of the hearing is deemed denied.

**Section 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders**

Interlocutory appeals may be taken to the Board from a ruling of the hearing officer. The Board may consider an interlocutory appeal upon the filing of a written motion.

**Section 101.520 Motions for Reconsideration**

- a) Any motion for reconsideration or modification of a final Board order must be filed within 35 days after the receipt of the order. (See Section 101.1002 of this Part.)
- b) Any response to a motion for reconsideration or modification must be filed within 14 days after the filing of the motion.
- c) A timely-filed motion for reconsideration or modification stays the effect of the final order until final disposition of the motion in accordance with Section 101.300(d)(2) of this Part.

**Section 101.522 Motions for Extension of Time**

The Board or hearing officer, for good cause shown on a motion after notice to the opposite party, may extend the time for filing any document or doing any act which is required by these rules to be done within a limited period, either before or after the expiration of time.

## SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

**Section 101.600 Hearings**

All hearings are open to the public and are held in compliance with the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.). The hearings are generally held in the county in which the source or facility is located unless otherwise ordered by the hearing officer. All hearings are subject to cancellation without notice. Interested persons may contact the Clerk's office or the hearing officer for information about the hearing. Parties, participants, and members of the public must conduct themselves with decorum.

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**Section 101.602 Notice of Board Hearings**

The Clerk will provide notice of all hearings, except for administrative citation hearings, in a newspaper of general circulation in the county in which the facility or pollution source is located, or where the activity in question occurred. Notice must be published at least 21 days prior to the hearing. If the proceeding involves federal rules which the State has been given delegated authority to administer, notice must be published at least 30 days prior to the hearing.

**Section 101.604 Formal Board Transcript**

All Board hearings will be transcribed by a certified court reporter in accordance with Section 32 of the Act or other applicable law. Any party or witnesses may file a motion with the hearing officer to correct the transcript within 14 days after receipt of the transcript in the Clerk's office. Failure of any party or witness to timely file a motion to correct the transcript constitutes waiver of right to correct, unless material prejudice results.

**Section 101.606 Informal Recordings of the Proceedings**

Informal recording of Board proceedings is allowed as provided for in this Section. The hearing officer may prohibit audio or video recording at hearing if a witness refuses to testify on the grounds that the witness may not be compelled to testify if any portion of the testimony is to be broadcast or televised. If the hearing officer determines that recording is disruptive or detrimental to proper development of the record, the hearing officer may limit or prohibit audio and/or video recording.

**Section 101.608 Default**

- a) Failure of a party to appear at the hearing, or failure to proceed as ordered by the Board or hearing officer, will constitute default.
- b) If a party fails to appear at hearing, the opposing party must prove their prima facie case in order to prevail on the merits.

**Section 101.610 Duties and Authority of the Hearing Officer**

The hearing officer has the duty to manage proceedings assigned, to set hearings, to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record for timely transmission to the Board. The hearing officer has all powers necessary to these ends, including the authority to:

- a) Require parties to proceed to hearing and establish a schedule for, and notice and service of, any prefiled submission of testimony and written exhibits;

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- b) Administer oaths and affirmations;
- c) Allow for the examination of or examine witnesses to ensure a clear and complete record;
- d) Regulate the course of the hearing, including controlling the order of proceedings;
- e) Establish reasonable limits on the duration of the testimony and questioning of any witness, and limit repetitive or cumulative testimony and questioning;
- f) Determine that a witness is adverse, hostile, or unwilling pursuant to Section 101.624 of this Part;
- g) Issue an order compelling the answers to interrogatories or responses to other discovery requests;
- h) Order the production of evidence pursuant to Section 101.614 of this Part;
- i) Order the filing of any required record or recommendation in a manner which provides for a timely review and development of issues prior to the hearing and consistent with any statutory decision deadline;
- j) Initiate, schedule, and conduct a pre-hearing conference;
- k) Order a briefing and comment schedule and exclude late-filed briefs and comments from the record;
- l) Rule upon objections and evidentiary questions;
- m) Order discovery pursuant to Sections 101.614 and 101.616 of this Part;
- n) Rule on any motion directed to the hearing officer or deferred to the hearing officer by the Board in accordance with Section 101.502 of this Part;
- o) Set status report schedules; and
- p) Require all participants in a rulemaking proceeding to state their positions with respect to the proposal.

**Section 101.612 Schedule to Complete the Record**

- a) The hearing officer must establish a schedule to complete the record. The schedule may provide dates and deadlines for pre-hearing conferences, discovery completion, and hearing and post-hearing submissions (including public comments). The schedule must provide for a completed record at least 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. The schedule must be in the form of a hearing officer order. The hearing officer must file the schedule with the Clerk and serve a copy of the schedule on all parties in accordance with Subpart C of this Part.
- b) The hearing officer may rule upon any motion to revise the schedule to complete the record. The hearing officer may grant such motion to the extent that the revised schedule provides for a completed record at least 30 days before the decision date or to prevent material prejudice. If the hearing officer grants a motion to revise the

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schedule, the hearing officer must file the revised schedule with the Clerk and serve a copy of the revised schedule on all parties in accordance with Subpart C of this Part. See also Section 101.510(d) of this Part.

**Section 101.614 Production of Information**

The hearing officer may, on his or her own motion or on the motion of any party, order the production of information that is relevant to the matter under consideration. The hearing officer will deny, limit or condition the production of information when necessary to prevent undue delay, undue expense, or harassment, or to protect materials from disclosure consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.

**Section 101.616 Discovery**

The assigned hearing officer will set all time deadlines for discovery not already provided for in this Subpart. Time deadlines will be consistent with Board deadlines. Discovery deadlines provided for in the Code of Civil Procedure do not apply. All discovery disputes will be handled by the assigned hearing officer.

- a) All relevant information and information calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure under 35 Ill. Adm. Code 130.
- b) If the parties cannot agree on the scope of discovery or the time or location of any deposition, the hearing officer has the authority to order discovery or to deny requests for discovery.
- c) All discovery must be completed at least 10 days prior to the scheduled hearing in the proceeding unless the hearing officer orders otherwise.
- d) The hearing officer may, on his or her own motion or on the motion of any party or witness, issue protective orders that deny, limit, condition or regulate discovery to prevent unreasonable expense, or harassment, to expedite resolution of the proceeding, or to protect non-disclosable materials from disclosure consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.
- e) Unless a claim of privilege is asserted, it is not a ground for objection that the testimony of a deponent or person interrogated will be inadmissible at hearing, if the information sought is reasonably calculated to lead to relevant information. Any appeals of rulings by the hearing officer regarding discovery must be in writing and filed with the Board prior to hearing.
- f) Failure to comply with any order regarding discovery subjects the offending persons to sanctions pursuant to Subpart H of this Part.
- g) If any person files any request for discovery or answers to discovery for any improper purpose, such as to harass or to cause unnecessary

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delay or needless increase in the cost of litigation, or knowingly gives a false answer to discovery questions, the Board, on its own motion or the motion of a party, may impose sanctions pursuant to Subpart H of this Part.

- b) A party must amend any prior responses to interrogatories, requests for production, or requests for admission if the party learns that the response is in some material respect incomplete or incorrect, and the additional or corrected information has not otherwise been made known to the other parties during the discovery process or in writing.

**Section 101.618 Admissions**

- a) General. All requests to admit must be served upon a party no later than 35 days before hearing. Copies of such requests should be filed upon the Board and the hearing officer. All answers or objections to requests to admit must be served upon the party requesting the admission, the Board, and the hearing officer within 20 days of the service of the request.

- b) Extension of time. In accordance with Sections 101.522 and 101.610 of this Part, the hearing officer may extend the time for filing any request, answer, or objection either before or after the expiration of time.

- c) Request to Admit. Any party serving a request to admit in accordance with subsection (d) or (e) must include the following language in the first paragraph of the request: "Failure to respond to the following requests to admit within 20 days may have severe consequences.

Failure to respond to the following requests will result in all the facts requested being deemed admitted as true for this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding or an attorney."

- d) Request for Admission of Fact. A party may serve a written request for admission of the truth of specific statements of fact on any other party.

- e) Request for Admission of Genuineness of Document. A party may serve a written request for admission of the genuineness of documents on any other party. Copies of the document must be served.

- f) Admission in the absence of denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 20 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request

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are made, the remainder of the request must be answered within the period designated in the request. A denial must fairly address the substance of the requested admission.

- g) Partial denial or qualification. If good faith requires that a party deny a part of a matter for which an admission is requested, or if a part requires qualification, the party must specify the part which is denied or qualified and admit only the remainder.

- h) Objection. Any objection to a request or to any answer will be heard by the hearing officer upon prompt notice and motion of the party making the request.

- i) Effect of admission. Any admission made by a party pursuant to a request under this Section is for the purpose of the pending proceeding only. It does not constitute an admission by the party for any other purpose and may not be used against him in any other proceeding.

- j) Expenses of Refusal to Admit. If a party, after being served with a request to admit the genuineness of any document or the truth of any matters of fact, fails to admit the truth of any of the matters or the genuineness of any documents and serves a sworn denial thereof, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter of fact, the party so moving may apply to the Board for an order under Subpart H of this Part for payment of reasonable expenses incurred.

**Section 101.620 Interrogatories**

- a) A party may serve written interrogatories on any other party, no later than 35 days before hearing. Unless otherwise ordered by the hearing officer, interrogatories must be filed pursuant to Section 101.302(i) of this Part and served upon the Clerk and the hearing officer.

- b) Within 20 days after service thereof, the party to whom the interrogatory is directed must serve the answers and objections, if any, upon the party submitting the interrogatories, the Clerk, and the hearing officer. Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to. Answers must be signed by the person making them and objections must be signed by the attorney making them or, in the event of an individual representing himself or herself, the individual making them.

- c) Grounds for an objection to an interrogatory must be stated with specificity. Any ground that is not stated in a timely objection is waived.

**Section 101.622 Subpoenas**

- a) Upon request by any party to a contested proceeding, the Clerk will issue subpoenas for the attendance of witnesses at a hearing or



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deposition. Subpoena forms are available at the Board's Chicago office. The person requesting the subpoena is responsible for completing the subpoena and serving it upon the witness.

- b) Service of the subpoena must be completed 10 days before the date of the required appearance. A copy of the subpoena must be filed with the Clerk after service upon the witness and served upon the hearing officer. Failure to serve both the Clerk and the hearing officer will render the subpoena null and void. Service and filing must be in accordance with Subpart C of this Part.
- c) Subpoenas may include a command to produce books, papers, documents, or other tangible things designated therein and relevant to the matter under consideration.
- d) The hearing officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable or irrelevant. The hearing officer will rule upon motions to quash or modify material requested in the subpoena pursuant to subsection (c) of this Part in accordance with the standards articulated in Section 101.614 of this Part.
- e) If the witness is not a resident of the State, the witness may be eligible for reasonable expenses from the party requesting the subpoena.
- f) Each witness subpoenaed by a party under this Section is entitled to receive witness fees from that party as provided in Section 47 of the Fees and Salaries Act [55 ILCS 45/47].
- g) Unless the hearing officer orders otherwise, any witness subpoenaed for a deposition may be required to attend only in the county in which he resides or maintains an office address. In accordance with Amended Supreme Court Rule 206(d), depositions must be limited to 3 hours in length unless the parties by stipulation agree to a longer time frame or unless the hearing officer orders otherwise after a showing of good cause. (See Ill. S. Ct. Amended Rule 206(d).)
- h) Failure of any witness to comply with a subpoena will subject the witness to sanctions under this Part, or the judicial enforcement of the subpoena. The Board may, upon proper motion by the party requesting the subpoena, request the Attorney General to pursue such judicial enforcement of the subpoena on behalf of the Board.

**Section 101.624 Examination of Adverse, Hostile or Unwilling Witnesses**

- a) Adverse Witnesses. At hearing, upon motion granted by the hearing officer, any party, or any person for whose immediate benefit the proceeding is prosecuted or defended, or any officers, directors, managing agents, or foremen of any party may be called as an adverse witness as allowed by the Code of Civil Procedure. (Section 2-1102 of the Code of Civil Procedure.) Adverse witnesses may be examined as if under cross-examination. The party calling the adverse witness may

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- b) rebut the testimony and may impeach the witness.  
Hostile or Unwilling Witnesses. If the hearing officer determines that any witness is hostile or unwilling, the witness may be examined by the party calling the witness as if under cross-examination.

**Section 101.626 Information Produced at Hearing**

In accordance with Section 10-40 of the IAPA, the hearing officer will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part.

- a) Hearsay. The hearing officer may admit hearsay evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless such evidence is privileged.
- b) Admissibility of Evidence. When the admissibility of evidence depends upon an arguable interpretation of substantive law, the hearing officer will admit such evidence.
- c) Scientific articles and treatises. Relevant scientific or technical articles, treatises, or materials may be introduced into evidence by a party. Such materials are subject to refutation or disputation through introduction of documentary evidence or expert testimony.
- d) Written testimony. Written testimony may be introduced by a party only if the persons whose written testimony is introduced are available for cross-examination at hearing.
- e) Admission of business records. A writing or record, whether in the form of any entry in a book or otherwise made as a memorandum or record of any act, transaction, occurrence, or event, may be admissible as evidence of the act, transaction, occurrence, or event. To be admissible, the writing or record will have been made in the regular course of business, provided it was the regular course of business to make such a memorandum or record at the time of such act, transaction, occurrence, or event, or within a reasonable time thereafter. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be admitted to affect the weight of the evidence, but will not affect admissibility. The term "business," as used in this subsection (e), includes businesses, professions, occupations, and callings of every kind.
- f) Prior inconsistent statements. Prior statements made under oath may be admitted to impeach a witness if the statement is inconsistent with the witness' testimony at hearing.
- g) Oral and written statements. Oral and written statements from participants may be taken at hearing in accordance with Section 101.628 of this Part.

**Section 101.628 Statements from Participants**

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

- a) Oral statements. The hearing officer may permit a participant, to make oral statements on the record when time, facilities, and concerns for a clear and concise hearing record so allow. Such oral statements must be made under oath and are subject to cross-examination.
- b) Written statements. Any participant may submit written statements relevant to the subject matter at any time prior to hearing or at hearing. Participants submitting such a statement will be subject to cross-examination by any party. Written statements submitted without the availability of cross-examination will be treated as public comment in accordance with subsection (c) of this Section and will be afforded lesser weight than evidence subject to cross-examination.
- c) Public Comments or Amicus Curiae Briefs. Participants may file public comments subject to the requirements of this Section and the hearing officer's schedule for completion of the record. The Board also allows for the filing of amicus curiae briefs by non-party participants. Amicus Curiae briefs should be filed in accordance with Section 101.110 of this Part.

1) Public comments must be filed within 14 days after the close of the last hearing unless the hearing officer specifies a different date for submission of post-hearing comments. However, all public comments must be filed with the Board no later than 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. Consistent with the burden of proof in a proceeding, the hearing officer may provide for differing filing deadlines with respect to post-hearing comments by different persons. Pursuant to hearing officer order, rebuttal public comments may be submitted.

2) All public comments must present arguments or comments based on evidence contained in the record. Such comments may also present legal argument citing legal authorities.

3) Comments must be filed with the Board. Comments will be distributed to parties and the hearing officer by the Clerk's office.

## SUBPART G: ORAL ARGUMENT

## Section 101.700 Oral Argument

- a) The Board may hear oral argument upon written motion of a party or the Board's own motion. Such oral argument will be transcribed by a stenographer provided by the Board and become part of the record of the proceedings before the Board. The purpose of oral argument is to address legal questions. Oral argument is not intended to address new facts.
- b) Motions for oral argument must contain arguments supporting the grant of the motion for oral argument. In considering a motion for oral

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## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

argument, the Board will consider, but is not limited to considering, the uniqueness of the issue or proceeding and whether the issue or proceeding involves a conflict of law.

- c) In any proceeding with a statutory decision deadline, the Board will deny the request for oral argument if there is insufficient time to schedule oral argument and allow time for the Board to issue its decision.
- d) If the Board grants the motion for oral argument, it will issue an order setting forth a schedule for oral argument that may include a briefing schedule. The brief will be limited to the issues for which oral argument was granted.

## SUBPART H: SANCTIONS

## Section 101.800 Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders

- a) If any person fails to comply with any provision of 35 Ill. Adm. Code 101 through 130 or fails to comply with any order entered by the Board or the hearing officer, including any subpoena issued by the Board, the Board may order sanctions. The Board may order sanctions on its own motion, or in response to a motion by a hearing officer or a party.
- b) Sanctions include, but are not limited to, the following:

- 1) Further proceedings may be stayed until the order or rules are complied with, except in proceedings with a statutory decision deadline. Proceedings with a statutory decision deadline may be dismissed prior to the date on which decision is due;
- 2) The offending person may be barred from filing any other pleading relating to any issue to which the refusal or failure relates;
- 3) The offending person may be barred from maintaining any particular claim, counterclaim, third-party complaint, or defense relating to that issue;
- 4) As to claims or defenses asserted in any pleading to which that issue is material, a judgment by default may be entered against the offending person or the proceeding may be dismissed with or without prejudice;
- 5) Any portion of the offending person's pleadings relating to that issue may be stricken and, if appropriate, judgment may be entered as to that issue;
- 6) The offending person may be required to pay the amount of reasonable expenses incurred by the other party, as a result of their non-compliance with a Board rule or Board or hearing officer order; and
- 7) The witness may be barred from testifying concerning that issue.
- c) In deciding what sanction to impose the Board will consider factors

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## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

including; the relative severity of the refusal or failure to comply; the past history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith on the part of the offending party or person.

**Section 101.802 Sanctions for Abuse of Discovery Procedures**

The Board or the hearing officer may order that information obtained through abuse of discovery procedures be suppressed. If a person willfully obtains or attempts to obtain information by an improper discovery method, willfully obtains or attempts to obtain information to which he is not entitled, or otherwise abuses discovery rules, the Board or hearing officer may enter any order provided for in this Part.

## SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

**Section 101.902 Motions For Reconsideration**

In ruling upon a motion under this Section, the Board will consider factors including new evidence, a change in the law, or any other reason to conclude that the Board's decision was in error. (See also Section 101.520 of this Part.)

**Section 101.904 Relief from and Review of Final Opinions and Orders**

- a) Upon its own motion or motion of any party, the Board may correct clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission. Such mistakes may be so corrected by the Board before the appeal is docketed in the appellate court. Thereafter, while the appeal is pending, such mistakes may be corrected only with leave of the appellate court. Any corrected order will be mailed to all parties and participants in that proceeding.
- b) On written motion, the Board may relieve a party from a final order entered in a contested proceeding, for the following:
  - 1) Newly discovered evidence that existed at the time of hearing and that by due diligence could not have been timely discovered;
  - 2) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
  - 3) Void order, such as an order based upon jurisdictional defects.
- c) A motion under this Section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the order was entered but is not a continuation of the proceeding. The motion must be supported by oath or affidavit or other appropriate showing as to matters not of record. All parties or participants in the proceeding must be notified by the movant as provided by Section 101.304 of this Part.

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

- d) A motion under subsection (b) of this Section must be filed with the Board within one year after entry of the order except that a motion pursuant to subsection (b)(3) of this Section must be filed within a reasonable time after entry of the order.
- e) Any response to a motion under this Section must be filed within 14 days after the filing of the motion.

**Section 101.906 Judicial Review of Board Orders**

- a) Pursuant to Sections 29 and 41 of the Act, Supreme Court Rule 335, and Section 10-50 of the APA, judicial review of final Board orders is available from the appellate court.
- b) For purposes of judicial review, final Board orders are appealable as of the date of service by the Board upon the appealing party.
- c) The procedure for stay of any final Board order during appeal will be as provided in Rule 335 of the Rules of the Supreme Court of Illinois. (Ill. S.Ct.Rule 335.)

**Section 101.908 Interlocutory Appeal**

Upon motion of any party the Board may consider an interlocutory appeal in accordance with Supreme Court Rule 308. (Ill. S.Ct.Rule 308.)

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

## Section 101.APPENDIX A Captions

## Section 101.ILLUSTRATION A Enforcement Case

## BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF  
ILLINOIS,

Complainant,

v.

W. R. JONES Co.,

Respondent.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

PCB xx-xxx  
(Enforcement-X)

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

## Section 101.ILLUSTRATION B Citizen's Enforcement Case

## BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHN DOE,

Complainant,

v.

W. R. JONES Co.,

Respondent.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

PCB xx-xxx  
(Enforcement-X)



POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED RULES

Section 101. ILLUSTRATION C Variance

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

W.R. WATER CO., )  
Petitioner, )  
 )  
v. ) PCB xx-xxx  
 ) (Variance-X)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
Respondent. )

POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED RULES

Section 101. ILLUSTRATION D Adjusted Standard Petition

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
PETITION OF ABC COMPANY )  
FOR AN ADJUSTED STANDARD ) AS xx-xxx  
FROM 35 Ill. Adm. Code XXX.XXX ) (Adjusted Standard-X)

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

## Section 101. ILLUSTRATION E Joint Petition for an Adjusted Standard

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

)  
)  
) PETITION OF ABC COMPANY AND  
) THE ILLINOIS ENVIRONMENTAL  
) PROTECTION AGENCY FOR  
) ADJUSTED STANDARD FROM  
) 35 Ill. Adm. Code XXX.XXX  
)

)  
) AS xx-xxx  
) (Adjusted Standard-X)

GENERAL COMPANY,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent.

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

## Section 101. ILLUSTRATION F Permit Appeal

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PCB xx-xxx  
(Permit Appeal-X)

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

**Section 101. ILLUSTRATION G Underground Storage Tank Appeal**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GENERAL COMPANY, )

Petitioner, )

v. )

PCB xx-xxx  
(UST Fund Appeal)

ILLINOIS ENVIRONMENTAL )

PROTECTION AGENCY, )

Respondent. )

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GENERAL COMPANY, )

Petitioner, )

v. )

PCB xx-xxx  
(UST Appeal)

OFFICE OF THE STATE )

FIRE MARSHAL, )

Respondent. )

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

**Section 101. ILLUSTRATION H Landfill Siting Review**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GENERAL COMPANY, )

Petitioner, )

v. )

PCB xx-xxx  
(Landfill Siting Review)XXX COUNTY AND ABC DISPOSAL )  
COMPANY, )

Respondents. )

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ABC DISPOSAL COMPANY, )

Petitioner, )

v. )

PCB xx-xxx  
(Landfill Siting Review)

XXX COUNTY, )

Respondent. )

POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED RULES

Section 101. ILLUSTRATION I Administrative Citation

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

COUNTY OF COOK,

Complainant,

v.

ABC DISPOSAL AND  
RECYCLING, INC.,

Respondent.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

AC-xx-xxx  
IEPA or County Number  
(Administrative Citation)

POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED RULES

Section 101. ILLUSTRATION J General Rulemaking

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

REVISION OF THE FLUORIDE  
DRINKING WATER STANDARD:  
PROPOSED AMENDMENTS TO  
35 Ill. Adm. Code XXX.XXX

)  
)  
)  
)  
)  
)

Rxx-xxx  
(Rulemaking-X)



POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED RULES

Section 101. APPENDIX B Appearance Form

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Applicable Caption )  
(see Appendix A) )  
docket number )

APPEARANCE

I hereby file my appearance in this proceeding, on behalf of  
ABC Company.

Attorney's Name

Name of Attorney and Firm  
Address  
Telephone Number

POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED RULES

Section 101. ILLUSTRATION K Site-Specific Rulemaking

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
)  
PROPOSED SITE SPECIFIC WATER )  
POLLUTION REGULATIONS )  
APPLICABLE TO XYZ )  
UTILITIES COMPANY OF ILLINOIS )  
DISCHARGE TO XYZ CREEK: )  
33 Ill. Adm. Code )

**BOARD NOTE:** The Board notes that all docket numbers consist of letter(s) followed by two numbers. The first two digit number is the fiscal year the matter was filed. Then the second number is the sequential number for that type of filing the Board has received that year. Persons making filings are not responsible for the Board docket number on the original filing. The Clerk of the Board will assign the appropriate docket number when the matter is filed. All filings in a matter that has been assigned a docket number should contain a docket number located as indicated on the examples above. The Board will also be designating its opinion and orders with the type of case and media involved in the matter. Where the above examples have the type of case preceded by "x" the Board will, for example if the case is dealing with a variance from certain water regulations, put the media, water, after variance to become "Variance-Water". Again, persons making filings need not place this on original filings. However, all filings in a matter that has been assigned the media should indicate that media in the location as in the above examples. Where there are specific procedural rules developed for specific types of cases, as in a "UST Appeal", persons making filings should follow those examples.

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

**Section 101.APPENDIX C Withdrawal of Appearance Form**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Applicable Caption  
(see Appendix A))  
)  
)  
)  
)

docket number

## NOTICE OF WITHDRAWAL OF APPEARANCE

I hereby give notice of withdrawal of my appearance as  
representative of ABC Company in this proceeding.

Attorney's Name

Name of Attorney and Firm  
Address  
Telephone Number

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

**Section 101.APPENDIX D Notice of Filing**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Applicable Caption  
(see Appendix A))  
)  
)  
)  
)

docket number

## NOTICE OF FILING

To: (List all persons served.)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the  
[specify what document was filed] of [name of persons filing the document], a copy of which is herewith served  
upon you.

Name of Attorney or Other Representative

Date

Name  
Address  
Telephone Number

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED RULES

## Section 101.APPENDIX E Certificates Of Service

## Section 101.ILLUSTRATION A Service by Non-Attorney

## PROOF OF SERVICE

I, the undersigned, on oath [or affirmation] state that I have served on the date of \_\_\_\_\_ the attached [describe document served], by [describe method of service], upon the following persons:

(list persons served)

[Signature]

Notary Seal

SUBSCRIBED AND SWORN TO BEFORE ME this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED RULES

## Section 101.ILLUSTRATION B Service By Attorney

## CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached [describe document served], by [describe method of service], upon the following persons:

(list of persons served)





## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED REPEALER

101.303 Repeal

101.304 Repeal

## Appendix A

Illustration A

Illustration B

Illustration C

Illustration D

Illustration E

Illustration F

## Appendix B

Appendix C

Appendix D

Appendix E

Illustration A

Illustration B

- 4) Statutory authority: 415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, and 41. [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, and 41]

- 5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules, and adopt new procedural rules at Parts 101-108, Part 125 and Part 130.

- 6) Will these proposed rules replace emergency rules currently in effect? No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Do these proposed rules contain incorporations by reference? No

- 9) Are there any other amendments pending on this Part? No

- 10) Statement of statewide policy objectives: While this proposed repealer does not impose a State mandate, the proposed new Part 101 imposes procedural mandates on units of local government to the extent they may appear before the Board.

- 11) Time, place and manner in which interested persons may comment on this Proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED REPEALER

Clerk's Office

Illinois Pollution Control Board

100 W. Randolph St., Suite 11-500

Chicago, IL 60601

Phone#: 312/814-6931

Request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620, or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

## 12) Initial regulatory flexibility analysis:

- A) Types of small businesses, small municipalities, and not-for-profit Corporations affected: None

- B) Reporting, bookkeeping or other procedures required for compliance: None

- C) Types of professional skills necessary for compliance: None

- 13) Regulatory Agenda on which this rulemaking was summarized: January 2000

The full text of the proposed repealer begins on the next page:

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED REPEALER

TITLE 35: ENVIRONMENTAL PROTECTION  
 SUBTITLE A: GENERAL PROVISIONS  
 CHAPTER I: POLLUTION CONTROL BOARD

## PART 101

GENERAL RULES (REPEALED)

## SUBPART A: GENERAL PROVISIONS

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 101.100 Applicability  
 101.101 Definitions  
 101.102 Filing Of Documents  
 101.103 Form of Documents  
 101.104 Length Of Briefs  
 101.105 Waivers  
 101.106 Incorporation Of Prior Proceedings  
 101.107 Appearances And Withdrawals  
 101.108 Substitution Of Attorneys  
 101.109 Computation Of Time

## SUBPART B: FILING AND PHOTOCOPYING FEES

Section  
 101.120 Filing Fees  
 101.121 Photocopying Fees  
 101.122 Forms Of Payment

## SUBPART C: SERVICE

Section  
 101.140 Applicability  
 101.141 Service Of Initial Filings  
 101.142 Service Of Subsequent Filings  
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 101.144 Effective Date Of Service

## SUBPART D: PUBLIC INFORMATION

Section  
 101.160 Public Information  
 101.161 Non-Disclosable Information  
 101.162 Publications

## SUBPART E: BOARD MEETINGS

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## POLLUTION CONTROL BOARD

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Section  
 101.180 Board Meetings  
 101.181 Agenda For Board Meetings

## SUBPART F: EX PARTE CONTACTS

Section  
 101.200 Ex Parte Contacts

## SUBPART G: HEARINGS

Section  
 101.220 Authority Of Hearing Officer  
 101.221 Hearing Decorum

## SUBPART H: MOTION PRACTICE

Section  
 101.240 Applicability  
 101.241 Filing Of Motions And Responses  
 101.242 Contents Of Motions And Responses  
 101.243 Motions Attacking Jurisdiction Or Sufficiency Of The Pleadings  
 101.244 Motions For Summary Judgment  
 101.245 Motions Preliminary To Hearing  
 101.246 Motions For Reconsideration  
 101.247 Disposition Of Motion

## SUBPART I: DISCOVERY

Section  
 101.260 Subpoenas  
 101.261 Production Of Information

## SUBPART J: SANCTIONS

Section  
 101.280 Sanctions For Refusal To Comply with Procedural Rules, Board Orders, Or Hearing Officer Orders  
 101.281 Sanctions For Abuse Of Discovery Procedures

## SUBPART K: RELIEF FROM AND REVIEW OF FINAL ORDERS

Section  
 101.300 Motions For Reconsideration  
 101.301 Relief From Final Orders  
 101.302 Judicial Review Of Final Board Orders

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## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED REPEALER

- 101.303 Stay Procedures  
101.304 Interlocutory Appeals

## APPENDIX A Captions

- ILLUSTRATION A General Rulemaking  
ILLUSTRATION B Site-Specific Rulemaking  
ILLUSTRATION C Adjusted Standard Petition  
ILLUSTRATION D Permit Appeal Or Variance  
ILLUSTRATION E Enforcement Cases  
ILLUSTRATION F Administrative Citation

## APPENDIX B Appearance Form

## APPENDIX C Withdrawal Of Appearance Form

## APPENDIX D Notice Of Filing

## APPENDIX E Certificates Of Service

## ILLUSTRATION A Service By Non-Attorney

## ILLUSTRATION B Service By Attorney

AUTHORITY: Implementing Sections 5, 7.1, 7.2, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40 and 41 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 1007.1, 1007.2, 1027, 1028, 1029, 1031, 1032, 1033, 1035, 1036, 1037, 1038, 1040 and 1041); and Section 4 of the Natural Resource Act (Ill. Rev. Stat. 1991, ch. 96 1/2, par. 7404); and authorized by Section 26 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1026).

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078, effective November 17, 1992; Part repealed in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 101.100 Applicability

- a) This Part governs the practices and procedures of the Pollution Control Board, and contains rules which are applicable to all proceedings conducted by the Board. This Part should be read in conjunction with 35 Ill. Adm. Code 102 through 120; which contain rules applicable to specific proceedings conducted by the Board. The provisions of this Part apply to 35 Ill. Adm. Code 102 through 120; however, in the event of a conflict between the rules of this Part and subsequent Parts, the more specific requirement of the subsequent Part applies.
- b) The provisions of the Code of Civil Procedure (Ill. Rev. Stat. 1987,

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED REPEALER

ch. 110, pars. 1-101 et seq.) and the Illinois Supreme Court Rules (Ill. Rev. Stat. 1987, ch. 110A, par. 1 et seq.) do not expressly apply to proceedings before the Board. However, in any absence of a specific provision in these procedural rules to govern a particular situation, the parties or participants may argue that a particular provision of the Code of Civil Procedure or the Illinois Supreme Court Rules provides guidance for the Board or hearing officer.

- c) The provisions contained in this Part and in 35 Ill. Adm. Code 102 through 120 are in addition to the provisions of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1001 et seq.), unless otherwise provided by the Act.

## Section 101.101 Definitions

The definitions of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1001 et seq.) apply to this Part unless otherwise provided. The following definitions also apply to this Part:

"Act" means the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1001 et seq.).

"Agency" means the Illinois Environmental Protection Agency.

"APA" means the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, par. 1001-1 et seq.).

"Attorney General" means the Office of the Attorney General of the State of Illinois.

"Board" means the Illinois Pollution Control Board.

"Chairman" means the Chairman of the Board.

"Clean Air Act" means the Federal Clean Air Act (42 U.S.C. 7401 et seq. (1991)).

"Clean Water Act" means the Federal Clean Water Act (33 U.S.C. 1251 et seq. (1991)).

"Clerk" means the Clerk of the Board.

"Contested case" means an adjudicatory proceeding, including but not limited to enforcement, variance, permit appeal, adjusted standard, and administrative citation proceedings, but not including regulatory, quasi-legislative, informational, or similar proceedings.

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED REPEALER

"Deinked Stock" means paper that has been processed to remove inks, clays, coatings, binders and other contaminants. (Illinois Solid Waste Management Act, Section 2.1, P.A. 87-485, effective January 1, 1992.)

"Document" means pleading, notice, motion, affidavit, memorandum, brief, petition, or other paper or combination of papers required or permitted to be filed.

"DNR" means the Illinois Department of Nuclear Safety.

"ENR" means the Illinois Department of Energy and Natural Resources.

"Evidence" means a paper, drawing, map, chart, report, study, or other tangible thing produced and submitted at hearing, or testimony received at hearing.

"Initial filing" means the filing which initiates a Board proceeding. For example, the initial filing in an enforcement proceeding is the complaint; in a permit appeal is a petition for review, and in a regulatory proceeding is the proposal. There is only one initial filing in each Board proceeding.

"JCPR" means the Joint Committee on Administrative Rules.

"Material" means relating to any substantive issue that is of consequence to the determination of a proceeding.

"Participant" means any person, not including the Board or its staff, who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including, but not limited to, filing a comment, being added to the notice list of a particular proceeding, or testifying at hearing.

"Party" means a person authorized by the Act to bring, defend, or intervene in a contested case before the Board.

"Person" means any entity defined in Section 3.26 of the Act, including but not limited to any individual, partnership, company, corporation, political subdivision, or state agency.

"Postconsumer material" means paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after the waste has passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage. "Postconsumer material" also includes all paper, paperboard, and fibrous wastes that are diverted or separated

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## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED REPEALER

from the municipal solid waste stream. (Illinois Solid Waste Management Act, Section 3(f)(2), P.A. 87-485, effective January 1, 1992.)

"Procedural rules" means the Board's procedural rules, contained in 35 Ill. Adm. Code 101 through 120.

"Recovered paper material" means postconsumer material, and dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets), including envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations, or from bag, box and carton manufacturing, and butt rolls, mill wrappers, and rejected unused stock. "Recovered paper material" also includes finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others. (Illinois Solid Waste Management Act, Section 3(f)(3), P.A. 87-485, effective January 1, 1992.)

"Registered agent" means a person registered with the Secretary of State for the purpose of accepting service of notices for any entity, or a person otherwise authorized in writing as an agency for that entity for the purpose of accepting service of notices for that entity in Board proceedings.

"Relevant" means having any tendency to make the existence of any fact that is of consequence to the determination of the proceeding more probable or less probable than it would be without that information.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.) (1991)).

"SDWA" means the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) (1991)).

"Site-specific rule" means a proposed or adopted regulation, act or general applicability, which applies only to a specific facility or geographic site.

"Undue delay" means delay which is unwarranted, unjustified, improper, or is more delay than necessary.

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"USEPA" means the United States Environmental Protection Agency.

## Section 101.102 Filing Of Documents

- a) Documents and requests permitted or required to be filed with the Board or its Clerk shall be addressed and mailed to or filed with the Clerk at 100 West Randolph Street, State of Illinois Center, Suite 11-500, Chicago, Illinois 60601. Filing, inspection, and copying of documents may be done in the Clerk's office from 8:30 a.m. to 4:30 p.m. Monday through Friday, except for national and state legal holidays. The Board offices are open from 8:30 a.m. to 5:00 p.m. Monday through Friday, except for national and state legal holidays.
- b) Filings received after 4:30 p.m. will be date-stamped the following business day.
- c) Documents may be filed with the Clerk by certified, registered, or First Class mail, by messenger service, or personally at the Board's Chicago office. Filing by electronic transmission, such as telefax machine or computer modem, will not be accepted, except when specifically requested by the Board.
- d) The time of filing documents will be the date on which they are date-stamped by the Clerk, unless date-stamped after any due date. If received after any due date, the time of mailing shall be deemed the time of filing. Proof of mailing shall be made pursuant to Section 101.143. However, the time for a decision deadline pursuant to Sections 38, 40, 40.1, and 41 of the Act does not begin until the date on which the initial filing in such a proceeding is date-stamped by the Clerk.
- e) Notwithstanding subsection (d), the Board or the hearing officer may accelerate a filing schedule to prevent undue delay, upon written notice to the participants or parties. The notice will specify a date by which the document must be received in the Clerk's office.

## Section 101.103 Form of Documents

- a) Documents shall clearly show the title of the proceeding in which they are filed. Appendix A of this Part sets forth examples of proper captions. Documents shall bear a heading which clearly describes the nature of the relief sought, such as, but not limited to "Petition for Amendment to Regulation," "Complaint," "Petition for Variance," "Petition for Review," "Motion," or "Public Comment."
- b) Except as otherwise provided, the original and nine (9) copies of all documents shall be filed with the Clerk. Only the original and four (4) copies of any discovery motion, deposition, interrogatory, answer to interrogatory, or subpoena need be filed with the Clerk.
- c) After the filing of the initial document in a proceeding, all filings, including exhibits, shall include the Board docket number for the

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proceeding in which the item is to be filed. If the filing is a document, the docket number shall appear on the first page of the filing. For filings which are not documents, the docket number shall appear on a readily visible portion of the filing.

- d) Documents, excluding exhibits, shall be typewritten or reproduced from documents, excluding exhibits, shall be typewritten on uncoated white paper of greater than 12 pound weight and measuring 8" x 10 1/2" or 8 1/2" x 11". Reproductions may be made by any process that produces legible black-on-white copies. All documents shall be fastened on the left side or in the upper left hand corner. The left margin of each page shall be at least 1 1/2 inches and the right margin at least one inch. As of January 1, 1992, all documents, excluding exhibits, filed with the Board by attorneys or by organized environmental and trade groups, shall be submitted on recycled paper. For purposes of this Section, "recycled paper" means paper which contains at least 50% recovered paper material. The recovered paper material shall contain at least 20% deinked stock or postconsumer material, until July 1, 1994; beginning July 1, 1994, shall contain at least 25% deinked stock or postconsumer material; beginning July 1, 1996, shall contain at least 30% deinked stock or postconsumer material; beginning July 1, 1998, shall contain at least 40% deinked stock or postconsumer material; and beginning July 1, 2000, shall contain at least 45% deinked stock or postconsumer material. Either the certificate or proof of service or the notice of filing accompanying all documents filed by attorneys or by organized environmental or trade groups shall state "This filing is submitted on recycled paper". This statement shall be made at the bottom of the first page of the certificate or proof of service, or the notice of filing. This recycled paper requirement does not apply to stationery, such as letterhead, when used for cover letters or similar purposes. Additionally, the Board encourages all participants to double-side copies of documents filed with the Board.
- e) The requirements of subsections (b), (c), and (d) above may be waived by the Board upon request. A request for a filing waiver shall be presented to the Board in the form of a motion accompanied by affidavits necessary to verify any factual assertions contained in the motion. If the Board finds that compliance with the filing requirements would impose an undue burden, the Board will grant the motion.
- f) Exhibits, where possible, shall be reduced to conform to the size requirements of subsection (d) above. However, one non-conforming copy may be filed with the Clerk's office.
- g) The original of each document filed shall be signed by the party or by its authorized representative or attorney. All documents shall bear the business address and telephone number of the attorney filing the document, or of the party who appears on his or her own behalf. The Clerk will refuse to accept for filing any document which does not

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comply with this subsection.

- b) Except as otherwise provided by Sections 1 through 4 of the Filmed Records Reproduction Act (Ill. Rev. Stat. 1991, Ch. 116, pars. 35 et seq.), or by leave of the Board, documents on microfiche are not acceptable for filing.

## Section 101.104 Length Of Briefs

- a) No brief in support of or in opposition to any motion shall exceed 15 pages without prior approval of the Board or hearing officer. This limit does not include appendices containing relevant material.
- b) No post-hearing brief or response brief, brief submitted in response to a Board order, or public comment submitted in lieu of a brief shall exceed 50 pages without prior approval of the Board or hearing officer. No reply brief shall exceed 25 pages. These limits do not include appendices containing relevant material.
- c) In considering any motion to exceed these limits, the Board or the hearing officer will take into account factors such as, but not limited to, the complexity of the proceeding, the number of issues involved, and the length of the record.

## Section 101.105 Waivers

A waiver of a deadline for Board action, as specified in Sections 38, 40, 40.1 and 41 of the Act, shall be filed as a separate document. The waiver shall be clearly titled as such, identify the proceeding by name and docket number, and be signed by the party or by his authorized representative or attorney. The waiver shall be an open waiver or a waiver until a calendar date certain. However, the Board reserves the right to accept waivers in other forms where it finds it necessary to prevent undue delay or material prejudice. A contingent waiver is not acceptable.

## Section 101.106 Incorporation Of Prior Proceedings

- a) Upon the separate written request of any person or on its own initiative, the Board or hearing officer may incorporate materials from the record of another Board docket into any proceeding. The person seeking incorporation shall file with the Board four copies of the material to be incorporated. The person seeking incorporation shall demonstrate to the Board or the hearing officer that the material to be incorporated is relevant to the proceeding. Notice of the request shall be given to all identified participants or parties by the person seeking incorporation.
- b) The Board will give the incorporated matter the appropriate weight in light of the following factors: the standard of evidence under which the material was previously presented to the Board; the present

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purpose for incorporating the material; and the past and current opportunity for cross-examination of the matters asserted within the incorporated material.

## Section 101.107 Appearances And Withdrawals

- a) Any person entitled to participate in Board proceedings shall appear as follows:
- 1) A natural person on his or her own behalf or by an attorney at law licensed and registered to practice in the State of Illinois, or both.
  - 2) A corporation, when a respondent in an enforcement case pursuant to 35 Ill. Adm. Code 103, by an attorney at law licensed and registered to practice in the State of Illinois. In all other proceedings, a corporation may appear through any officer, employee, or representative, or by an attorney at law licensed and registered to practice in the State of Illinois or both.
  - 3) Any other person, including a unit of local government, through any officer, employee, or representative, or by an attorney licensed and registered to practice in the State of Illinois, or both.
- b) Attorneys not licensed and registered to practice in the State of Illinois may request to appear on a particular matter on motion filed with the Board.
- c) An attorney appearing in a representative capacity shall file a separate written notice of appearance with the Clerk, together with proof of service and notice of filing on all parties and participants or their representatives. A sample appearance form appears in Appendix B.
- d) An attorney who has appeared in a representative capacity and who wishes to withdraw from that representation shall file a notice of withdrawal with the Clerk, together with proof of service and notice of filing on all participants or their representatives. A sample notice of withdrawal appears in Appendix C.

## Section 101.108 Substitution Of Attorneys

Any attorney who substitutes for an attorney of record shall file a written appearance pursuant to Section 101.107(c). That appearance shall identify the attorney for whom the substitution is made.

## Section 101.109 Computation Of Time

Computation of any period of time prescribed by this Chapter or the Act shall begin with the first calendar day following the day on which the act, event or development occurs and shall run until the end of the last day, or the next

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business day if the last day is a Saturday, Sunday or national or state legal holiday.

## SUBPART B: FILING AND PHOTOCOPYING FEES

## Section 101.120 Filing Fees

- a) A person filing an action for which a filing fee is prescribed by the Act shall pay that fee at the time the petition is presented to the Clerk for filing.
- b) The types of petitions for which fees are required and the amount of those fees are as follows:
  - 1) *Petition for site-specific regulation*, \$75;
  - 2) *Petition for variance*, \$75;
  - 3) *Petition for review of permit* or any petition for review pursuant to Section 40 of the Act, \$75;
  - 4) *Petition to contest local government decision pursuant to Section 40.1 of the Act*, \$75; and
  - 5) *Petition for adjusted standard pursuant to Section 28.1 of the Act*, \$75. (Section 7.2 of the Act.)
- c) The Clerk will refuse to accept any petition which is not accompanied by the required fee. The fee must be paid in the form specified in Section 101.122.

## Section 101.121 Photocopying Fees

- a) All files, records, and data may be copied at Board offices in Chicago upon payment of *reasonable reproduction fees to be determined by the Board*. (Section 7 of the Act.)
- b) The Board will contract for any copying that would impose a substantial administrative burden on the Board. The person requesting such copies will be charged the reproduction charges incurred by the Board.
- c) Requests for copies will be honored in as timely a manner as possible. Requests for copies by mail will be honored. However, the Board reserves the right to charge the requesting party for the mailing costs incurred by the Board.

## Section 101.122 Forms Of Payment

- a) Filing fees and photocopying fees may be paid by money order or check. Cash payments will be accepted, but are strongly discouraged.
- b) All checks and money orders shall be made payable to the Illinois Pollution Control Board.
- c) In the event that a check is not honored by petitioner's bank, the Board will enter a sanction order in that proceeding. Sanctions may

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include, but are not limited to, dismissal of the action for non-payment, or re-computation of any decision deadline to exclude the time in which the filing fee remains uncollected.

## SUBPART C: SERVICE

## Section 101.140 Applicability

This Subpart applies to all Board proceedings generally. However, to the extent that 35 Ill. Adm. Code 102 through 120 conflict with or supplement this Subpart, that more specific Part governs.

## Section 101.141 Service Of Initial Filings

A copy of all initial filings in any Board proceeding shall be served upon all persons, required by this Chapter to be served, or their registered agent. 35 Ill. Adm. Code 102 through 120 set forth more specifically who must be served in any given type of Board proceeding. Service of all initial filings shall be made personally, or by registered, certified, or First Class mail, or by messenger service. However, initial complaints in enforcement proceedings pursuant to 35 Ill. Adm. Code 103 must be served personally, by registered or certified mail, or by messenger service.

## Section 101.142 Service Of Subsequent Filings

After initial filings are served pursuant to Section 101.141, all subsequent filings shall be served personally, or by United States mail, or by messenger service.

## Section 101.143 Proof Of Service

a) Service of filings is proved by:

- 1) In case of service by personal delivery, by certificate of the attorney, or affidavit of the person other than an attorney, who made delivery; or
  - 2) In case of service by messenger service, by messenger service receipt; or
  - 3) In case of service by registered or certified mail, by registered or certified mail receipt; or
  - 4) In case of service by First Class mail, by certificate of attorney, or affidavit of person other than attorney, which states the date, time, and place of mailing, the complete address which appeared on the envelope, and the fact that proper postage was prepaid.
- b) A sample certificate of service appears in Appendix E of this Part.

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**Section 101.144 Effective Date Of Service**

- a) In the case of service by personal delivery, service is complete on the date of that personal delivery.
- b) In the case of service by registered or certified mail, or by messenger service, service is complete on the date specified on the registered or certified mail receipt or the messenger service receipt.
- c) There is a rebuttable presumption that service by First Class mail is complete four days after mailing.

## SUBPART D: PUBLIC INFORMATION

**Section 101.160 Public Information**

- a) The Clerk will maintain files containing all information submitted to or produced by the Board or any of its members relating to matters within the Board's jurisdiction. Without limiting the foregoing, the files will include: pleadings, motions, notices, minutes, transcripts, exhibits, orders and opinions, proposed and adopted regulations, communications to or from the Board or any Board member, the Environmental Register and other Board releases, business records, informal complaints, and internal communications filed at the request of any Board member with consent of the author of that communication.
- b) All files will be open to reasonable public inspection and copying, except the following material:
  - 1) Internal communications between and among Board members and staff (except as provided in subsection (a));
  - 2) Material protected from public disclosure under the trade secret provisions of 35 Ill. Adm. Code 120; and
  - 3) Material which is stamped "Not Subject to Disclosure" by Board order, pursuant to Section 101.161.
- c) The Clerk shall maintain a list of all files open to public inspection.

**Section 101.161 Non-Disclosable Information**

- a) Only the following materials may be stamped "Not Subject to Disclosure" by the Board:
  - 1) Information which constitutes a trade secret;
  - 2) Information privileged against introduction in judicial proceedings;
  - 3) Information concerning secret manufacturing processes or confidential data submitted by any person under the Act; and
  - 4) Income and earnings data when not an issue in the proceeding.
- b) Material will be stamped "Not Subject to Disclosure" only upon (Section 7(a) of the Act.)

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written application at the time the material is filed. Procedures governing the identification and protection of trade secrets are found in 35 Ill. Adm. Code 120. An application for non-disclosure other than pertaining to trade secrets shall contain the following:

- 1) Identification of the precise material, or parts of material, for which non-disclosure is sought;
  - 2) Indication of the particular non-disclosure category into which the material falls; and
  - 3) A concise statement of the reasons for requesting non-disclosure.
- The application shall be verified by affidavit and contain such information as will inform the Board of the nature of material for which non-disclosure is sought, the reasons why non-disclosure is necessary, and the number and title of all persons familiar with such information, and how long the material has been limited from disclosure.

- c) A single copy of the material for non-disclosure shall be filed with the Clerk with the application and shall be available for examination only by Board members, Board assistants, Environmental Scientists of the Board's Scientific/Technical Section, the assigned hearing officer, the Clerk, and the Assistant Clerk. This material may also be made available to officers, employees, or authorized representatives of this State or the United States as provided in Section 7(e) of the Act. If any agency of this State or the United States is a participant in the proceeding in which the application for non-disclosure is made, the applicant shall serve those agency participants with notice of the application for non-disclosure. The Board will rule on every application and inform the applicant of its decision. Public inspection of the material for non-disclosure shall be barred until the application has been disposed of by the Board and the time for appeal has run. The Board may enter conditional non-disclosure orders allowing withdrawal by the applicant of the material covered by such order, at which time the Board's ruling on the application shall be based on the record excluding the material so withdrawn.
- d) All material found not subject to disclosure is governed by the procedures and protections of 35 Ill. Adm. Code 120-Subpart C.

**Section 101.162 Publications**

- a) At least once each month, the Board will publish an Environmental Register containing reports of Board activities and notices of meetings and hearings. One copy will be sent to any persons without charge, upon request.
- b) Copies of the Act and regulations in effect will be provided without charge, by mail and at the Board's Chicago office.
- c) The Board will regularly compile its decisions and orders into

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volumes, which subscribers may buy and receive by mail at a reasonable cost.

## SUBPART E: BOARD MEETINGS

## Section 101.180 Board Meetings

- a) All decisions of the Board will be made at meetings open to the public. Four members of the Board constitute a quorum. Four affirmative votes are required for any final determinations of the Board, except in a proceeding to remove a seal under Section 34(d) of the Act.
- b) *The Board will hold at least one meeting each month and will adopt at the beginning of each calendar or fiscal year a schedule of meetings which shall appear at least once in its minutes and in the Environmental Register. Special meetings may be called by the chairman or by any two Board members upon delivery of 24 hours written notice to the office of each member. Public notice of all meetings will be given at least 24 hours in advance of each meeting by posting at the Board's offices. In emergencies in which a majority of the Board certifies that exigencies of the time require, the requirements of public notice and 24 hour written notice to members may be dispensed with, and Board members will receive such notice as is reasonable under the circumstances. (Section 5 of the Act.)*
- c) The Board will keep a complete and accurate record of all meetings including the votes of individual members on all adjudications and proposed regulations.
- d) No oral argument will be heard at any Board meeting, except by leave of the Board.

## Section 101.181 Agenda For Board Meetings

Unless the Board determines that undue delay or material prejudice will result, no document received by the Clerk for filing after 4:30 p.m. two days before a scheduled Board meeting will be placed on the agenda for that Board meeting. Any such filing will appear on the agenda for the next regularly scheduled Board meeting.

## SUBPART F: EX PARTE CONTACTS

## Section 101.200 Ex Parte Contacts

- a) Contested Case Proceedings. No Board member, hearing officer, or employee of the Board shall communicate ex parte with any person not employed by the Board with respect to the substance of any contested case proceeding pending before the Board. Ex parte contacts with

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respect to individual pollution sources which may become the subject of such a proceeding are permissible to the extent that information so received is relevant to rulemaking proceedings, but caution shall be exercised by Board members and employees to avoid prejudging the merits of any potential case.

- b) Regulatory Proceedings. Board members and employees should not permit ex parte contacts designed to influence his or her action in any regulatory proceeding after docketing and authorization of hearings. Whenever practicable, communications shall be in writing and addressed to the Board rather than to individual members.
- c) Nothing in this Section shall preclude Board members, hearing officers, or employees from receiving informal complaints about individual pollution sources, or forbid such administrative contacts as would be appropriate for judges and other judicial officers.
- d) In the event that an ex parte contact does occur, Board members and employees shall make that contact a matter of public record, in order that the information on which the Board bases its decisions can be subject to scrutiny and to rebuttal. An ex parte contact may be made a matter of public record in several ways, including, but not limited to, inclusion of a memo in the public file or announcement on the record at a public hearing.

## SUBPART G: HEARINGS

## Section 101.220 Authority Of Hearing Officer

The hearing officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record. He or she shall have all powers necessary to these ends, including (but not limited to) the authority to:

- a) Require and establish a schedule for, and notice and distribution of, any prior submission of testimony and written exhibits;
- b) Require all participants to state their position with respect to the proposal;
- c) Administer oaths and affirmations;
- d) Examine witnesses and direct witnesses to testify;
- e) Regulate the course of the hearing; including but not limited to controlling the order of proceedings;
- f) Establish reasonable limits on the duration of the testimony and questioning of any witness and limit repetitious or cumulative testimony and questioning;
- g) Issue, in the name of the Board, an order compelling the answering of interrogatories or other discovery requests;
- h) Order the production of evidence pursuant to Section 101.261;
- i) Initiate, schedule and conduct a pre-hearing conference;
- j) Issue subpoenas pursuant to Section 101.260;

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- k) Exclude late-filed briefs and comments from inclusion in the record for decision;
- l) Rule upon motions as specified in Section 101.247;
- m) Rule upon objections and evidentiary questions; and
- n) Establish a schedule for discovery, including a date by which discovery must be completed.

## Section 101.221 Hearing Decorum

- a) Hearings should be conducted with fitting dignity and decorum. Any persons may record the proceedings by tape, film or other means. The hearing officer may prescribe rules to govern the right to make such recordings. If the hearing officer determines that recording is disruptive or detrimental to proper development of the record, he or she may limit or prohibit recording. If a witness refuses to testify on the grounds that he or she may not be compelled to testify if any portion of the witness' testimony is to be broadcast or televised or if motion pictures are to be taken of the witness while the witness is testifying, the hearing officer will prohibit such recording during the testimony of the witness. The hearing officer shall make the witnesses aware of this provision before the hearing begins.
- b) Participants in proceedings before the Board shall at all times conduct themselves with the same degree of dignity and respect that they would before a court.
- c) Board hearings are not "meetings" within the provisions of the Open Meetings Act. (Ill. Rev. Stat. 1987, ch. 102, par. 41 et seq.)

## SUBPART H: MOTION PRACTICE

## Section 101.240 Applicability

This Subpart applies to all Board proceedings generally. However, to the extent that 35 Ill. Adm. Code 102 through 120 conflict with or supplement this Subpart, that more specific Part governs.

## Section 101.241 Filing Of Motions And Responses

- a) All motions shall be in writing, unless made orally on the record during a hearing, and shall state whether directed to the Board or to the hearing officer. If the motion is directed to the Board, ten copies shall be filed with the Clerk. If the motion is directed to the hearing officer, three copies shall be filed with the Clerk and one copy served upon the hearing officer. All other participants shall be served pursuant to Section 101.142.
- b) Within 7 days after service of a motion, a participant or party may file a response to the motion. If no response is filed, such

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participant or party shall be deemed to have waived objection to the granting of the motion, but such waiver of objection does not bind the Board or the hearing officer in the decision of the motion. Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 7-day response period.

- c) The moving person shall not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice.

## Section 101.242 Contents Of Motions And Responses

- a) All motions shall clearly state the reasons for and grounds upon which the motion is made and shall contain a concise statement of the relief sought. Facts asserted which are not of record in the proceeding shall be supported by affidavit. A brief may be included.
- b) All responses shall clearly state the position of the responding person and the reasons for that position. Facts asserted which are not of record in the proceeding shall be supported by affidavit. A brief may be included.

## Section 101.243 Motions Attacking Jurisdiction Or Sufficiency Of The Pleadings

- a) All motions to strike or dismiss challenging the sufficiency of any pleading filed with the Board shall be filed within 21 days after the service of the challenged document, unless the Board determines that material prejudice would result. In the case of a regulatory proceeding pursuant to 35 Ill. Adm. Code 102, however, motions challenging the sufficiency of a regulatory proposal shall be filed within 30 days of the Board order formally accepting that proposal for hearing.
- b) All motions challenging the jurisdiction of the Board shall be filed prior to the filing of any other document by the moving participant or party, unless the Board determines that material prejudice will result. Such participant or party will be allowed to appear specially for the purpose of making such motion.
- c) A person may participate in a proceeding without waiving any jurisdictional objection if such objection is timely raised pursuant to subsection (b).

## Section 101.244 Motions For Summary Judgment

A motion for summary judgment prior to hearing may be made by any party to an enforcement proceeding pursuant to Title VIII of the Act or a permit appeal pursuant to Title X of the Act. Specific rules for such motions for summary judgment are found in 35 Ill. Adm. Code 103 (enforcement proceedings) and 35

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Ill. Adm. Code 105 (permit appeals).

**Section 101.245 Motions Preliminary To Hearing**

- a) All motions preliminary to hearing shall be presented to the Board or the hearing officer at least 21 days prior to the date of hearing, unless allowed by the Board or the hearing officer to prevent material prejudice. The Board or the hearing officer may direct that the scheduled hearing proceed during the pendency of the motion. The Board may defer ruling upon any motion, except a motion pursuant to Section 101.243, until its decision on the merits of the case.
- b) No motion to continue a hearing in a proceeding with a deadline for Board action, as specified in the Act, will be granted unless the motion to continue is accompanied by a waiver of that decision deadline. The waiver shall conform with the requirements of Section 101.105.

**Section 101.246 Motions For Reconsideration**

- a) Any motion for reconsideration or modification of a final Board order shall be filed within 35 days of the adoption of the order.
- b) Any response to a motion for reconsideration or modification shall be filed within 14 days from the filing of the motion.
- c) A timely-filed motion for reconsideration or modification stays the effect of the final order until final disposition of the motion. The time for appeal of the Board order runs anew after the Board rules upon the motion unless otherwise provided.
- d) In ruling upon a motion under this Section, the Board will consider factors including, but not limited to, error in the decision and facts in the record which were overlooked.

**Section 101.247 Disposition Of Motion**

- a) The hearing officer may rule upon all motions except any motion to dismiss, motion to decide a proceeding on the merits, motion to strike any claim or defense for insufficiency or want of proof, motion claiming lack of jurisdiction, motion for consolidation, motion for summary judgment, or motion for reconsideration. The hearing officer will refer all such motions to the Board. If the hearing officer refuses to act upon any motion, he or she will refer such motion to the Board within 5 days of the filing of any response.
- b) No interlocutory appeal of a motion may be taken to the Board from a ruling of the hearing officer, except by allowance of the Board after written motion. Notwithstanding, when in the judgment of the hearing officer immediate appeal of any order is necessary to prevent harm to the public interest or to avoid unusual delay or expense, the hearing

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officer may refer the ruling promptly to the Board and notify the parties and participants. A continuing objection to a hearing officer ruling must be raised at the close of hearing or in post-hearing submissions.

- c) Unless otherwise ordered by the Board to prevent material prejudice, neither the filing of a motion, the certification of a question to the Board, nor any appeal to the Board of a hearing officer order shall stay the proceeding or extend the time for the performance of any act. All hearing officer orders shall remain in effect during the pendency of any appeal to the Board.

## SUBPART I: DISCOVERY

**Section 101.260 Subpoenas**

- a) Upon request by any party to a contested case, the Clerk shall issue subpoenas for the attendance of witnesses at a hearing or deposition. Subpoenas forms are available at the Board's Chicago office. The person requesting the subpoena is responsible for completing the subpoena and serving it upon the witness.
- b) Upon written motion by any participant in a regulatory proceeding pursuant to 35 Ill. Adm. Code 102, the hearing officer or Board may issue subpoenas for the attendance of witnesses at a hearing or deposition. The movant is responsible for serving the subpoena upon the witness if the motion is granted.
- c) Service of the subpoena must be completed 7 days before the date of the required appearance. A copy of the subpoena shall be filed with the Clerk after service upon the witness and served upon the hearing officer.
- d) Subpoenas may include a command to produce books, papers, documents, or other tangible things designated therein and relevant to the matter under consideration.
- e) The hearing officer or the Board, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable, oppressive, or irrelevant. The hearing officer or the Board will rule upon motions to quash or modify material requested in the subpoena pursuant to subsection (d) in accordance with the standards articulated in Section 101.261.
- f) If the witness is a non-resident of the state, the hearing officer or Board may provide for payment of the witness' reasonable expenses by the person requesting the subpoena.
- g) Each witness subpoenaed by a party or participant under this Section is entitled to receive witness fees from that party or participant as provided in Section 47 of "AN ACT concerning fees and salaries and to classify the several counties of this state with reference thereto."

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- (Ill. Rev. Stat. 1987, ch. 53, par. 65.)
- h) Any witness subpoenaed for a deposition may be required to attend only in the county in which he or she resides or maintains an office address, or in any other place ordered by the Board.
- i) Failure of any witness to comply with a subpoena shall subject the witness to sanctions under this Part, or the judicial enforcement of the subpoena. The Board may, upon proper motion by the participant or party requesting the subpoena, request the Attorney General to pursue such judicial enforcement of the subpoena on behalf of the Board.

## Section 101.261 Production Of Information

The hearing officer may at any time on his or her own motion, or on motion of any participant, or at the direction of the Board order the production of information which is relevant to the matter under consideration. The hearing officer will deny, limit or condition the production of information when necessary to prevent undue delay, undue expense, harassment, oppression or to protect materials from disclosure consistent with the provisions of Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 101.161 and 120.

## SUBPART J: SANCTIONS

## Section 101.280 Sanctions For Refusal To Comply with Procedural Rules, Board Orders, Or Hearing Officer Orders

- a) If a party or any person unreasonably refuses to comply with any provision of 35 Ill. Adm. Code 101 through 120 or fails to comply with any order entered by the Board or the hearing officer, including any subpoena issued by the Board or hearing officer, the Board will order sanctions. In addition to remedies elsewhere specifically provided, the sanctions may include, among others, the following:
- 1) That further proceedings be stayed until the order or rules are complied with, except where the non-complying party is the petitioner in a petition for variance or permit appeal, such proceeding may be dismissed prior to the date on which decision is due;
  - 2) That the offending person be barred from filing any other pleading relating to any issue to which the refusal or failure relates;
  - 3) That the offending person be barred from maintaining any particular claim, counter claim, third-party complaint, or defense relating to that issue;
  - 4) That a witness be barred from testifying concerning that issue;
  - 5) That, as to claims or defense asserted in any pleading to which that issue is material, a judgment by default be entered against the offending person or that the proceeding be dismissed with or

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- without prejudice:
- 6) That any portion of the offending person's pleadings relating to that issue be stricken and, if appropriate, judgment be entered as to that issue;
  - 7) That the offending person pay the amount of reasonable expenses incurred in obtaining an order pursuant to this Section.
  - b) In deciding what sanction to impose the Board will consider factors including, but not limited to, the relative severity of the refusal or failure to comply, the past history of the proceeding, and the degree to which the proceeding has been delayed or prejudiced.

## Section 101.281 Sanctions For Abuse Of Discovery Procedures

The Board or the hearing officer will order that information obtained through abuse of discovery procedures be suppressed. If a person willfully obtains or attempts to obtain information by an improper discovery method, willfully obtains or attempts to obtain information to which he is not entitled, or otherwise abuses discovery rules, the Board will enter any order provided for in this Subpart.

## SUBPART K: RELIEF FROM AND REVIEW OF FINAL ORDERS

## Section 101.300 Motions for Reconsideration

Motions for reconsideration or modification of a final Board order shall be filed within 35 days of the order, pursuant to Section 101.246. Responses to such motions are also governed by Section 101.246.

## Section 101.301 Relief From Final Orders

- a) Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Board at anytime on its own initiative or on the motion of any party and after such notice, if any, as the Board orders. Such mistakes may be so corrected by the Board before the appeal is docketed in the appellate court. Thereafter, while the appeal is pending, such mistakes may be corrected only with leave of the appellate court. Any corrected order will be mailed to all parties and participants in that proceeding.
- b) On written motion, the Board may relieve a party from a final order entered in a contested case, for the following:
- 1) Newly discovered evidence which existed at the time of hearing and which by due diligence could not have been timely discovered;
  - or
  - 2) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or

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## POLLUTION CONTROL BOARD

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- 3) Void order, such as an order based upon jurisdictional defects.
- c) A motion under this Section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the order was entered but is not a continuation of the proceeding. The motion must be supported by affidavit or other appropriate showing as to matters not of record. All parties or participants in the proceeding shall be notified by the movant as provided by Section 101.141(a).
- d) A motion under subsection (b) shall be filed with the Board within one year after entry of the order except that a motion pursuant to subsection (b)(3) shall be filed within a reasonable time after entry of the order.
- e) Any response to a motion under this Section shall be filed within 14 days of the filing of the motion.

## Section 101.302 Judicial Review Of Final Board Orders

- a) Judicial review of final Board orders shall be pursuant to Sections 29 and 41 of the Act (Ill. Rev. Stat. 1987, ch. 111 1/2, pars. 1029 and 1041), Rule 335 of the Rules of the Supreme Court of Illinois (Ill. Rev. Stat. 1987, ch. 110A, par. 335) and the Administrative Review Law (Ill. Rev. Stat. 1987, ch. 110, pars. 3-101 et seq.).
- b) For purposes of judicial review, Board action becomes final upon adoption of the Board's final order in a proceeding, or upon subsequent Board action on any motion for reconsideration is filed pursuant to Section 101.246.

## Section 101.303 Stay Procedures

The procedure for stay of any Board order during appeal shall be as provided in Rule 335 of the Rules of the Supreme Court of Illinois.

## Section 101.304 Interlocutory Appeals

- a) When the Board, in making an interlocutory order not otherwise appealable, finds pursuant to Rule 308 of the Rules of the Supreme Court of Illinois (Ill. Rev. Stat. 1987, ch. 110A, par. 308) that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the Board may so state in writing, identifying the question of law involved, on its own motion or on motion of any party.
- b) Appeal of such interlocutory order by the Board shall be in accordance with Rule 308 of the Supreme Court of Illinois.

## POLLUTION CONTROL BOARD

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## Section 101.APPENDIX A Captions

## Section 101.ILLUSTRATION A General Rulemaking

## BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

## In the matter of:

*Revision of the Fluoride  
drinking water standard:  
amendments to 35 Ill. Adm.  
Code XXX.XXX*  
(Rulemaking)

POLLUTION CONTROL BOARD  
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Section 101. ILLUSTRATION C Adjusted Standard Petition

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the matter of:  
Petition of ABC Company (and  
The Illinois Environmental  
Protection Agency) for adjusted  
standard from 35 Ill. Adm. Code  
XXX.XXX AS  
(Adjusted standard)

POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED REPEALER

Section 101. ILLUSTRATION B Site-specific Rulemaking

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the matter of:  
Petition of ABC Company for  
Site-specific air regulation:  
35 Ill. Adm. Code XXX.XX R  
(Site-Specific Rulemaking)

POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED REPEALER

Section 101. ILLUSTRATION D Permit Appeal Or Variance

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

*In the matter of:*

*ABC Company, Petitioner,  
v.*

PCB  
(Permit Appeal or Variance)

*Illinois Environmental  
Protection Agency,  
Respondent.*

POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED REPEALER

Section 101. ILLUSTRATION E Enforcement Cases

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

*Illinois Environmental  
Protection Agency, (or other  
person's name),  
Complainant,  
v.*

PCB  
(Enforcement)

*ABC Company,  
Respondent.*

## POLLUTION CONTROL BOARD

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## Section 101. ILLUSTRATION F Administrative Citation

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

*Illinois Environmental  
Protection Agency (or unit of  
local government),*  
Complainant,

v.

ABC Company,

Respondent.

AC-  
(Administrative Citation)  
IEPA Number

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED REPEALER

## Section 101. APPENDIX B Appearance Form

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Applicable caption  
(see Appendix A)

docket number

APPEARANCE

I hereby file my appearance in this proceeding, on behalf of ABC Company.

Attorney's Name

Name of Attorney and Firm  
Address  
Telephone Number



POLLUTION CONTROL BOARD

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Section 101.APPENDIX C Withdrawal Of Appearance Form

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Applicable caption  
(see Appendix A)

docket number

NOTICE OF WITHDRAWAL OF APPEARANCE

I hereby give notice of withdrawal of my appearance as representative of  
ABC Company in this proceeding.

Attorney's Name

Name of Attorney and Firm  
Address  
Telephone Number

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED REPEALER

Section 101.APPENDIX D Notice Of Filing

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Applicable caption  
(see Appendix A)

docket number

NOTICE OF FILING

To: (List all persons served.)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of  
the Pollution Control Board the [specify what document was filed] of [name of  
persons filing the document], a copy of which is herewith served upon you.

Date

Name  
Address  
Telephone Number

Name of Attorney or Other  
Representative

POLLUTION CONTROL BOARD  
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Section 101. ILLUSTRATION B Service By Attorney

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached [describe document served], by [describe method of service], upon the following persons:

(list of persons served)

Date \_\_\_\_\_ [signature] \_\_\_\_\_

POLLUTION CONTROL BOARD  
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Section 101. APPENDIX E Certificates of Service

Section 101. ILLUSTRATION A Service by Non-Attorney

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached [describe document served], by [describe method of service], upon the following persons:

(list persons served)

\_\_\_\_\_ [signature] \_\_\_\_\_

Notary Seal

SUBSCRIBED AND SWORN TO BEFORE  
ME this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_.

\_\_\_\_\_  
Notary Public

POLLUTION CONTROL BOARD  
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1) Heading of the Part: Hearings Pursuant To Specific Rules

2) Code citation: 35 Ill. Adm. Code 106

3) Section Numbers: Proposed Action:

106.101 Repeal  
106.102 Repeal  
106.103 Repeal  
106.104 Repeal  
106.105 Repeal  
106.106 Repeal  
106.107 Repeal  
106.201 Repeal  
106.202 Repeal  
106.203 Repeal  
106.204 Repeal  
106.301 Repeal  
106.302 Repeal  
106.303 Repeal  
106.304 Repeal  
106.305 Repeal  
106.306 Repeal  
106.410 Repeal  
106.411 Repeal  
106.412 Repeal  
106.413 Repeal  
106.414 Repeal  
106.415 Repeal  
106.416 Repeal  
106.501 Repeal  
106.502 Repeal  
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106.506 Repeal  
106.507 Repeal  
106.601 Repeal  
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106.603 Repeal  
106.604 Repeal  
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106.701 Repeal  
106.702 Repeal  
106.703 Repeal  
106.704 Repeal  
106.705 Repeal

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106.706 Repeal  
106.707 Repeal  
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106.944 Repeal

## POLLUTION CONTROL BOARD

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106.945 Repeal  
 106.946 Repeal  
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 106.952 Repeal  
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 106.956 Repeal  
 106.958 Repeal  
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 106.962 Repeal  
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 106.968 Repeal  
 106.970 Repeal  
 106.972 Repeal  
 106.976 Repeal  
 106.978 Repeal  
 106.980 Repeal  
 106.982 Repeal  
 Appendix A Repeal

4) Statutory authority: 415 ILCS 5/5, 14.2(c), 22.4, 26, 27, 28, 28.1, 28.5, 39.5, and 52.3 of the Environmental Protection Act (415 ILCS 5/5, 14.2(c), 22.4, 26, 27, 28, 28.1, 28.5, 39.5, and 52.3).

5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules, and adopt new procedural rules at Parts 101-108, Part 125 and Part 130.

6) Will these proposed repealer replace emergency rules currently in effect?  
No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed repealer contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of statewide policy objectives: While this proposed repealer does not impose a State mandate, the proposed new Part 106 imposes procedural mandates on units of local government to the extent they may appear before the Board.

11) Time, place and manner in which interested persons may comment on this

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Proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

Clerk's Office  
 Illinois Pollution Control Board  
 100 W. Randolph St., Suite 11-500  
 Chicago, IL 60601  
 312/814-6931

Request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620 or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

## 12) Initial regulatory flexibility analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory agenda on which this rulemaking was summarized: January 2000

The full text of the Proposed Repealer begins on the next page:

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## POLLUTION CONTROL BOARD

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

## PART 106

## HEARINGS PURSUANT TO SPECIFIC RULES (REPEALED)

## SUBPART A: HEATED EFFLUENT DEMONSTRATIONS

Section  
106.101  
106.102  
106.103  
106.104  
106.105  
106.106  
106.107

Petition  
Requirements for Petition  
Parties  
Recommendation  
Notice and Hearing  
Transcripts  
Opinion and Order

## SUBPART B: ARTIFICIAL COOLING LAKE DEMONSTRATIONS

Section  
106.201  
106.202  
106.203  
106.204

Petition  
Notice and Hearing  
Transcripts  
Effective Date

## SUBPART C: SULFUR DIOXIDE DEMONSTRATIONS

Section  
106.301  
106.302  
106.303  
106.304  
106.305  
106.306

Petition  
Requirements for Petition  
Parties  
Recommendation  
Notice and Hearing  
Transcripts

## SUBPART D: RCRA ADJUSTED STANDARD PROCEDURES

Section  
106.401  
106.402  
106.403  
106.404  
106.405  
106.406

Petition (Repealed)  
Notice of Petition (Repealed)  
Recommendation (Repealed)  
Response (Repealed)  
Public Comment (Repealed)  
Public Hearings (Repealed)  
Decision (Repealed)

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106.408  
106.410  
106.411  
106.412  
106.413  
106.414  
106.415  
106.416

Appeal (Repealed)  
Scope and Applicability  
Joint or Single Petition  
Request to Agency to Join as Co-Petitioner  
Contents of Petition  
Response and Reply  
Notice and Conduct of Hearing  
Opinions and Orders

## SUBPART E: AIR ADJUSTED STANDARD PROCEDURES

Section  
106.501  
106.502  
106.503  
106.504  
106.505  
106.506  
106.507

Scope and Applicability  
Joint or Single Petition  
Request to Agency to Join as Co-Petitioner  
Contents of Petition  
Response and Reply  
Notice and Conduct of Hearing  
Opinions and Orders

## SUBPART F: WATER WELL SETBACK EXCEPTION PROCEDURES

Section  
106.601  
106.602  
106.603  
106.604  
106.605

Scope and Applicability  
Contents of Petition  
Response and Reply  
Notice and Conduct of Hearing  
Opinions and Orders

## SUBPART G: ADJUSTED STANDARDS

Section  
106.701  
106.702  
106.703  
106.704  
106.705  
106.706  
106.707  
106.708  
106.709  
106.710  
106.711  
106.712  
106.713  
106.714

Applicability  
Definitions  
Joint or Single Petition  
Request to Agency to Join as Co-Petitioner  
Petition Contents  
Petition Verification  
Federal Procedural Requirements  
Incorporated Material  
Motions  
Service of Filings  
Petition Notice  
Proof of Petition Notice  
Request for Public Hearing  
Agency Response



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106.715 Amended Petition and Amended Response  
106.801 Hearing Scheduled  
106.802 Hearing Notice  
106.803 Pre-Hearing Submission of Testimony and Exhibits  
106.804 Discovery  
106.805 Admissible Evidence  
106.806 Order of Hearing  
106.807 Post-hearing Comments  
106.808 Burden of Proof  
106.901 Board Deliberations  
106.902 Dismissal of Petition  
106.903 Board Decision  
106.904 Opinion and Order  
106.905 Appeal of Board Decisions  
106.906 Publication of Adjusted Standards  
106.907 Effect of Filing a Petition  
106.908

## SUBPART H: REVOCATION AND REOPENING OF CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMITS

Section  
106.910 Applicability  
106.911 Definitions  
106.912 Petition  
106.913 Response and Reply  
106.914 Notice and Hearing  
106.915 Opinion and Order  
106.916 USEPA Review of Proposed Determination

## SUBPART I: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY DETERMINATIONS

Section  
106.920 Applicability  
106.921 Definitions  
106.922 Petition  
106.923 Response and Reply  
106.924 Notice and Hearing  
106.925 Opinion and Order

## SUBPART J: CULPABILITY DETERMINATIONS

Section  
106.930 Applicability  
106.931 Petition for Review  
106.932 Response and Reply  
106.933 Notice and Hearing

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106.934 Opinion and Order

## SUBPART K: INVOLUNTARY TERMINATION OF ENVIRONMENTAL MANAGEMENT SYSTEM AGREEMENTS (EMSAs)

Section  
106.940 Purpose, Applicability  
106.941 Definitions  
106.942 Severability  
106.943 Termination Under Section 52.3-4(b) of the Act  
106.946 Who May Initiate, Parties  
106.948 Notice, Statement of Deficiency, Answer  
106.950 Service  
106.952 Notice of Hearing  
106.954 Deficient Performance  
106.956 Board Decision  
106.958 Burden of Proof  
106.960 Motions, Responses  
106.962 Intervention  
106.964 Continuances  
106.966 Discovery, Admissions  
106.968 Subpoenas  
106.970 Settlement Procedure  
106.972 Authority of Hearing Officer, Board Members and Board Assistants  
106.974 Order and Conduct of Hearing  
106.976 Evidentiary Matters  
106.978 Post-Hearing Procedures  
106.980 Motion After Entry of Final Order  
106.982 Relief from Section 106.956 Final Orders

## APPENDIX A Old Rule Numbers Referenced

AUTHORITY: Implementing Sections 5, 14.2(c), 22.4, 27, 28, 28.1, 28.5, 39.5 and 52.3 and authorized by Sections 26, 39.5 and 52.3 of the Environmental Protection Act (415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5, 26, 39.5 and 52.3)

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579, effective July 11, 1994; amended in R99-9 at

## POLLUTION CONTROL BOARD

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23 Ill. Reg. 2697, effective February 16, 1999; repealed in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: HEATED EFFLUENT DEMONSTRATIONS

## Section 106.101 Petition

- a) A hearing pursuant to 35 Ill. Adm. Code 302.211(f) shall be commenced by filing a petition for Section 302.211(f) hearing with the Agency and by filing ten copies with the Clerk of the Board.
- b) At the time of filing its petition, petitioner shall submit to the Agency and to the Board any reports or other evidence in accord with Section 106.102 including all evidence petitioner intends to introduce at the hearing.
- c) Unless the contrary is clearly indicated, all references to "Parts" or "Sections" are to Illinois Administrative Code, Title 35: Environmental Protection. For example, "Part 309" is 35 Ill. Adm. Code 309, and "Section 309.101" is 35 Ill. Adm. Code 309.101.

## Section 106.102 Requirements for Petition

The following information, where applicable, shall be filed:

- a) General Plant Description
  - 1) Generating capacity;
  - 2) Type of fuel used;
  - 3) Operating characteristics of the condenser cooling system;
  - 4) History of the load factor of the plant for the last five years;
  - 5) Projected load factors for the life of the plant;
  - 6) Estimated date of retirement for each unit at the plant and any plans for additional units at the plant;
  - 7) History of plant shutdowns; and,
  - 8) Planned, emergency, and projected shutdowns with frequency and duration.
- b) Description of Method for Heat Dissipation
  - 1) Type of system used (once-through, mechanical draft cooling towers, etc.) in narrative form; and,
  - 2) Summary information on temperature of discharge to receiving waters in narrative form.
- c) Plume Studies
  - 1) Actual plume studies in the last five years correlated with plant operation and meteorological conditions;
  - 2) Theoretical plume studies for all four seasons for typical and worst case conditions. Worst case conditions shall be identified as worst conditions of plant load factor, precipitation, ambient water temperature, air temperature; such studies shall consider the frequency of occurrence and their joint probabilities of

## POLLUTION CONTROL BOARD

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- occurrence; and
- 3) Theoretical plume studies which identify isotherms at 3° Fahrenheit (1.7° Centigrade) intervals down to ambient temperature indicating three dimensional effects.
- d) The discharger shall satisfactorily demonstrate that discharges from that source have not caused and cannot be reasonably expected to cause significant ecological damage to the receiving waters, including but not limited to:
  - 1) Biological studies in the last five years on receiving waters, including species studied, location of studies, and conclusions reached, including conclusions as to both the lethal and sublethal effects of the thermal discharge; (wildfowl, amphibians, etc.) in the area as a result of the thermal discharge;
  - 2) Secondary Considerations
    - A) Possible and known impact on recreation from thermal discharges; and
    - B) Management practices employed or planned in order to limit the effect of any environmental harm established under paragraph (d) above.
  - 4) The required showing in this paragraph (d) may take the form of an acceptable and still accurate final environmental impact statement or pertinent provisions of environmental assessments used in the preparation of the final environmental impact statement; or may take the form of a showing pursuant to Section 304.141(c) or Section 302.211(j).

## Section 106.103 Parties

The Agency shall be joined as a party in any hearing pursuant to this Part.

## Section 106.104 Recommendation

- a) Within sixty days of the filing of the petition, the Agency may make a recommendation to the Board as to the ecological impact of the thermal discharges from petitioner's source upon the receiving waters. Such recommendation may include:
  - 1) A description of the efforts made by the Agency in conducting its review;
  - 2) The Agency's conclusion as to whether discharges from the source have caused or can reasonably be expected to cause significant ecological damage to the receiving waters;
  - 3) The factual basis for the Agency's conclusion;
  - 4) Any corrective measures which the Agency recommends be taken and the recommended time period for implementation of such measures; and

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- 5) The Agency's conclusion of what disposition should be made of the petition.
- b) The Agency shall serve a copy of its recommendation upon petitioner personally or by First Class United States mail, and ten copies shall be filed with the Clerk with proof of service. Filing of a recommendation by the Agency beyond the sixty-day period shall be grounds for the Board to postpone consideration of the petition to a date which will allow reasonable time to prepare.
- c) The petitioner or any other person may file a response to the Agency recommendation within 14 days with proper notice given to the Board and the Agency.

## Section 106.105 Notice and Hearing

- a) The Clerk shall give notice of the petition and hearing in accordance with Part 103. The proceedings shall be in accordance with Part 103. However, the Part 103 requirements as to the county in which the hearing is to be held shall be inapplicable.
- b) In a hearing, the burden of proof shall be on petitioner.
- c) The record from any proceeding pursuant to Section 302.211(j) or Section 304.141(c), in which the source which is the subject of the Section 302.211(f) hearing was a party, shall be incorporated into the record of the Section 302.211(f) hearing.

## Section 106.106 Transcripts

- a) In any proceeding brought pursuant to Section 302.211(f), the petitioner at its own cost shall furnish to the Board within 15 days following the completion of the hearing seven legible copies of a complete stenographic transcript of the proceedings of the hearing.
- b) Upon petition and good cause shown, the Board may assume such cost.

## Section 106.107 Opinion and Order

- a) Subsequent to hearing, the Board shall prepare a written Opinion and Order, which shall include:
- 1) Findings of fact, with references to principal supporting items of evidence in the record;
  - 2) The Board's final determination as to whether discharges from the source have caused or can reasonably be expected to cause significant ecological damage to the receiving waters; and
  - 3) Any corrective measures the Board finds appropriate.
- b) If the Board requires corrective measures to be taken, it may require the posting of sufficient performance bond or other security to insure the implementation of such corrective measures within the time prescribed.

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- c) The Clerk shall publish the Opinion and Order with the vote of each Board Member recorded and shall notify petitioner of such Opinion and Order.

## SUBPART B: ARTIFICIAL COOLING LAKE DEMONSTRATIONS

## Section 106.201 Petition

A hearing pursuant to 35 Ill. Adm. Code 302.211(j), shall be commenced by filing a petition for a determination of specific thermal standards pursuant to Section 302.211(j)(5). At the time such petition is filed, the petitioner shall submit to the Agency and to the Board any reports or other evidence which it plans to introduce in support of said petition.

## Section 106.202 Notice and Hearing

- a) The Clerk shall give notice of the petition and hearing in accordance with Part 103. The proceedings shall be in accordance with Part 103, except as otherwise provided herein.
- b) In a hearing, the burden of proof shall be on the petitioner.
- c) Intervention shall be allowed by any party in accordance with Section 103.142, except that such intervention shall not be limited by subsections 103.142(a)(1) and 103.142(a)(2).

## Section 106.203 Transcripts

- a) In any proceeding brought pursuant to Section 302.211(j), the petitioner at its own cost shall furnish to the Board within 15 days following the completion of the hearing seven legible copies of a complete stenographic transcript of the proceedings of the hearing.
- b) Upon petition and good cause shown, the Board may assume such cost.

## Section 106.204 Effective Date

This Subpart B shall apply to petitions filed subsequent to April 1, 1977.

## SUBPART C: SULFUR DIOXIDE DEMONSTRATIONS

## Section 106.301 Petition

- a) A hearing pursuant to Rule 204(e)(3) of the Air Pollution Control Regulations, Chapter 2 (to be codified as Subtitle B, Chapter 1) of the Board's Rules and Regulations, shall be commenced by filing a petition for a Rule 204(e)(3) hearing with the Agency and by filing ten copies with the Clerk of the Board.
- b) At the time of filing of its petition, petitioner shall submit to the

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Agency and to the Board any reports or other evidence in accord with Section 106.302.

- c) Petitioner shall ensure that the procedural requirements of 40 CFR Sec. 51.4 (1977) are met. At least 30 days prior to the date of the hearing, Petitioner shall:

- 1) Give notice to the public by prominent advertisement in the Air Quality Control Region affected announcing the date, time and place of such hearing;
- 2) Make available a copy of the petition for public inspection in at least one location in the Air Quality Control Region in which the source is located;
- 3) Notify the Administrator of the U.S. Environmental Protection Agency (through the appropriate Regional Office);
- 4) Notify each local air pollution control agency located within the aforementioned Air Quality Control Region;
- 5) Notify, in the case of an interstate Air Quality Control Region, any air pollution control agencies of other states included, in whole or in part, in the Region.

## Section 106.302 Requirements for Petition

The petition shall include but not be limited to the following information:

- a) An explicit statement of the site-specific emission limitation (in pounds of sulfur dioxide per million btu actual heat input and total pounds of sulfur dioxide per hour) which is proposed for the facility.
- b) Emission Sources Description
  - 1) The diameter, height, exit gas temperature, and exit gas velocity for all stacks or vents through which sulfur dioxide is emitted into the atmosphere;
  - 2) A description of the fuels used including type, ultimate analysis, sulfur content, and heat content;
  - 3) A description of the type of fuel combustion equipment including method of firing and size (in million btu per hour capacity);
  - 4) A topographic map of terrain within 30 miles of the emission source(s);
  - 5) A specific description of the location of the emission sources, including a plot plan;
  - 6) A specific description of the operating conditions which produce maximum sulfur dioxide emissions.
- c) A summary of any and all ambient air quality data collected by the owner or operator of the source(s) since January 1, 1973. The summary shall include annual averages; maximum and second-highest one-hour, three-hour, and 24-hour averages for each month; and the number of times the three-hour and 24-hour sulfur dioxide standards were exceeded during each month.
- d) A summary of any and all meteorological data collected by the owner or

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operator of the source(s) since January 1, 1973, if such data are used in the development of the site-specific emission standard.

- e) A complete description of a justification for all dispersion models and plume rise equations which used to develop the site-specific emission limitation including all model equations.

- f) A description of and justification for the use of all data which were inputs to the dispersion and plume rise formula used to establish the site-specific emission standard. The description and justification shall cover, as a minimum, the following input data:

- 1) Stack diameters, stack heights, exit gas temperatures, and exit gas velocities for all stacks and vents emitting sulfur dioxide at the subject facility as well as for any other sources of sulfur dioxide which were modeled;
- 2) All sulfur dioxide emission sources which were modeled;
- 3) All meteorological data.

- g) Calculated maximum ground-level concentrations using the following method, or such other method (or modification of the hereinafter stated method) which the petitioner proves to the satisfaction of the Board to be acceptable.

- 1) Selection of simulation model:
  - A) Gaussian models which allow the input of hourly meteorological data shall be used which are appropriate for the specific location and type of source(s) in question.
  - B) Dispersion models presented in "Guidelines on Air Quality Models" (EPA-450/2-78-027), as amended from time to time, or those developed by the Board to be equivalent to these models shall be used for detailed air quality studies.
- 2) Selection of meteorological data and stack parameters:
  - A) The most recent five years of hour-by-hour meteorological data reasonably available, including wind speed, wind direction, atmospheric stability, mixing height and surface temperature shall be used, unless the petitioner demonstrates that one of the five years causes substantially higher concentrations than the other four, in which case detailed analyses conducted for only that "worst case" year would be acceptable. Notwithstanding the previous sentence, one year of on-site data may be used in lieu of the 5-year data requirement.
  - B) Data shall be from the nearest, representative, quality controlled meteorological collecting site.
  - C) Stack parameters (including emission rate, stack height, stack diameter, exit velocity, and exit temperature) shall reflect the maximum operating rate for comparison with the 24-hour and 3-hour sulfur dioxide standards.

- 3) Receptors:

- A) Receptors shall be located so as to ensure that the source's



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maximum impact is detected.  
B) The determination of the receptor grid shall be fully documented in the modeling study.

## 4) Special conditions:

A) All special conditions which may affect the dispersion of the effluent plume, including local terrain effects and aerodynamic downwash, shall be considered in the modeling study.

B) If terrain is a factor in the vicinity of the source, a model capable of handling variable-height receptors shall be used.

C) If the computed height of the effluent plume is less than 2.5 times the height of nearby buildings or local obstructions, aerodynamic downwash shall be studied and considered as a possible factor in the dispersion of that effluent.

## 5) Determination of violation:

The determination of whether an applicable air quality increment or standard is being violated shall be based on the second highest predicted concentration over the receptor grid for short-term averaging times and on the highest predicted concentration for annual averaging times. However, if only one year of meteorological data is used in the short-term analysis, then the highest-predicted concentration may be compared to the applicable standard to determine whether a violation has occurred.

## 6) Other sources:

Effects of other sources of sulfur dioxide shall be taken into account in the modeling study.

A) An acceptable method is to estimate the "background" from monitoring data which has been subjected to adequate quality control where available. When monitored data is used, the background shall be estimated using monitoring days with meteorological conditions similar to those identified as "worst case" for the source in question.

B) If monitoring data is not available, then all sources of sulfur dioxide having a significant impact in the area of the source's impact area shall be used in the simulation model. These sources of sulfur dioxide shall also be modeled at their maximum allowable emission rate for any studies addressing 24-hour or 3-hour averaging times.

h) Estimates of the frequency, characteristics, probable time of occurrence, and duration of the meteorological conditions associated with the maximum ground-level concentration of sulfur dioxide to which the facility under study contributes. A description of the techniques used in arriving at the above estimates shall be included.

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i) Background concentrations which were determined for all meteorological conditions required to be examined under subsection (g) and for any other meteorological conditions considered in the development of the alternative standard.

j) A description of the method that was used to determine background sulfur dioxide concentrations in the vicinity of the subject facility for each of the meteorological conditions required to be examined under subsection (g) and for any additional meteorological conditions considered in developing the alternative standard.

k) An evaluation and calibration of the dispersion model if air quality monitoring data were available to perform such evaluation and calibration.

## Section 106.303 Parties

The Agency shall be a party to any hearing held pursuant to Rule 204(e)(3) of the Air Pollution Control Regulations.

## Section 106.304 Recommendation

a) Within 90 days of the filing of the petition the Agency shall make a recommendation to the Board as to be proposed site-specific emission limitation. Such recommendation may include the following:

- 1) A description of the efforts made by the Agency in conducting its review;
- 2) The Agency's conclusion as to whether the proposed site-specific emission limitation is adequate to prevent violations of the Primary and Secondary Sulfur Dioxide Ambient Air Quality Standards;
- 3) The Agency's conclusion as to what disposition should be made of the petition.

b) The Agency shall serve a copy of its recommendation upon petitioner, and ten copies shall be filed with the Clerk with proof of service.

c) The petitioner or any other person may file a response to the Agency recommendation within 14 days with proper notice given to the Board and the Agency.

## Section 106.305 Notice and Hearing

a) The Clerk shall give notice of the petition and hearing in accordance with Part 103. The proceedings shall be in accordance with Part 103. The hearing shall be held in the county in which the source is located.

b) In a hearing, the burden of proof shall be on the petitioner.

## Section 106.306 Transcripts



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- a) In any proceeding brought pursuant, to this Part, the petitioner at its own cost shall furnish to the Board within 15 days following the completion of the hearing seven legible copies of a complete stenographic transcript of the proceedings of the hearing.
- b) Upon petition and good cause shown, the Board may assume such cost.

## SUBPART D: RCRA ADJUSTED STANDARD PROCEDURES

## Section 106.401 Petition (Repealed)

## Section 106.402 Notice of Petition (Repealed)

## Section 106.403 Recommendation (Repealed)

## Section 106.404 Response (Repealed)

## Section 106.405 Public Comment (Repealed)

## Section 106.406 Public Hearings (Repealed)

## Section 106.407 Decision (Repealed)

## Section 106.408 Appeal (Repealed)

## Section 106.410 Scope and Applicability

This Subpart applies only whenever provision for an adjusted standard, as provided in Section 28.1 of the Environmental Protection Act (Act), is contained in a regulation of general applicability in 35 Ill. Adm. Code 700 through 750.

## Section 106.411 Joint or Single Petition

A person may initiate an adjusted standard proceeding either by filing a petition jointly with the Illinois Environmental Protection Agency (Agency), or by filing a petition singly.

## Section 106.412 Request to Agency To Join As Co-Petitioner

- a) The Agency may, in its discretion, act as a co-petitioner in any adjusted standard proceeding.
- b) Any person may request Agency assistance in initiating a petition for adjusted standard. The Agency may require the person to submit to the Agency any background information in the person's possession relevant to the adjusted standard which is sought. The Agency shall promptly notify the person in writing of its determination either to join as a

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- co-petitioner, or to decline to join as a co-petitioner. If the Agency declines to join as a co-petitioner, the Agency shall state the basis for this decision.
- c) Discretionary decisions made by the Agency pursuant to this Section are not appealable to the Board.

## Section 106.413 Contents of Petition

- a) The petitioner shall file ten copies of the petition for adjusted standard with the Clerk of the Pollution Control Board (Board), and shall serve one copy upon the Agency.
- b) The petition shall contain the following information:
  - 1) Identification of the regulation of general applicability for which an adjusted standard is sought;
  - 2) A written statement, signed by the petitioner and the Agency, if the Agency is a co-petitioner, or an authorized representative, outlining the scope of the evaluation, the nature of, the reasons for and the basis of the adjusted standard, consistent with the level of justification contained in the regulation of general applicability;
  - 3) The nature of the petitioner's operations and control equipment; and
  - 4) Any additional information which may be required in the regulation of general applicability.

## Section 106.414 Response and Reply

- a) Within 21 days after the filing of a petition, the Agency shall file a response to any petition in which it has not joined as a co-petitioner. This response shall include the Agency's comments concerning the Board's action on the petition.
- b) The petitioner may file a reply within 14 days after the filing of any Agency response.

## Section 106.415 Notice and Conduct of Hearing

- a) The Board will hold at least one public hearing prior to granting an adjusted standard.
- b) The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 102.162.
- c) The proceeding will be in accordance with 35 Ill. Adm. Code 102-Subpart J.

## Section 106.416 Opinions and Orders

- a) The Board will adopt an order and opinion stating the facts and

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reasons leading to the final Board determination, consistent with any considerations which may be specified in the regulation of general applicability or Section 27(a) of the Act.

- b) The Board will issue such other orders as the Board deems appropriate, including, but not limited to, accepting or rejecting the petition, requiring the submission of further information or directing that further hearings be held.
- c) *Such Board Orders and Opinions will be maintained for public inspection by the Clerk of the Board and a listing of all determinations made pursuant to this subpart will be published in the Illinois Register and the Environmental Register at the end of each fiscal year.*
- b) *A final board determination made under this subpart may be appealed pursuant to Section 41 of the Act.*

## SUPPORT E: AIR ADJUSTED STANDARD PROCEDURES

## Section 106.501 Scope and Applicability

This Subpart applies only whenever an adjusted standard, as provided in Section 28.1 of the Environmental Protection Act (Act), is sought pursuant to 35 Ill. Adm. Code 212.126.

## Section 106.502 Joint or Single Petition

A person may initiate an adjusted standard proceeding either by filing a petition jointly with the Illinois Environmental Protection Agency (Agency), or by filing a petition singly.

## Section 106.503 Request to Agency to Join As Co-Petitioner

- a) The Agency may, in its discretion, act as a co-petitioner in any adjusted standard proceeding.
- b) Any person may request Agency assistance in initiating a petition for adjusted standard. The Agency may require the person to submit to the Agency any background information in the person's possession relevant to the adjusted standard which is sought. The Agency shall promptly notify the person in writing of its determination either to join as a co-petitioner, or to decline to join as a co-petitioner. If the Agency declines to join as a co-petitioner, the Agency shall state the basis for this decision.
- c) Discretionary decisions made by the Agency pursuant to this Section are not appealable to the Board.

## Section 106.504 Contents of Petition

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- a) The petitioner shall file ten copies of the petition for adjusted standard with the Clerk of the Pollution Control Board (Board), and shall serve one copy upon the Agency.
- b) The petition shall contain the following information:
  - 1) Identification of the regulation of general applicability for which an adjusted standard is sought;
  - 2) A written statement, signed by the petitioner, or an authorized representative, outlining the scope of the evaluation, the nature of, the reasons for and the basis of the adjusted standard, consistent with the level of justification contained in the regulation of general applicability.
  - 3) The nature of the petitioner's operations and control equipment; and
  - 4) Any additional information which may be required in the regulation of general applicability.

## Section 106.505 Response and Reply

- a) Within 45 days after the filing of a petition, the Agency shall file a response to any petition in which it has not joined as a co-petitioner. This response shall include the Agency's recommendations concerning the Board's proposed action on the petition.
- b) The petitioner may file a reply within 14 days after the filing of any Agency response.

## Section 106.506 Notice and Conduct of Hearing

- a) The Board will hold at least one public hearing prior to granting an adjusted standard.
- b) The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 102.162.
- c) The proceedings will be in accordance with 35 Ill. Adm. Code 102. Subpart J.

## Section 106.507 Opinions and Orders

- a) The Board will adopt an order and opinion stating the facts and reasons leading to the final Board determination, consistent with any considerations which may be specified in the regulation of general applicability or Section 27(a) of the Act.
- b) The Board will issue such other orders as the Board deems appropriate, including, but not limited to, accepting or rejecting the petition, requiring the submission of further information or directing that further hearings be held.
- c) *Such Board orders and opinions will be maintained for public inspection by the Clerk of the Board and a listing of all*

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*determinations made pursuant to this Subpart will be published in the Illinois Register and the Environmental Register at the end of each fiscal year. (Section 28.1 of the Act).*

- d) *A final board determination made under this Subpart may be appealed pursuant to Section 41 of the Act. (Section 28.1 of the Act).*

## SUBPART F: WATER WELL SETBACK EXCEPTION PROCEDURES

## Section 106.601 Scope and Applicability

This Subpart applies to the provision for exception contained in Section 14.2(c) of the Act.

## Section 106.602 Contents of Petition

- a) The petitioner shall file ten copies of the petition for exception with the Clerk of the Pollution Control Board (Board), and shall serve one copy upon the Agency.

- b) The petition shall contain the following information:

- 1) A written statement, signed by the petitioner or an authorized representative, outlining the scope of the evaluation, the nature of, the reasons for and the basis of the exception, consistent with the level of justification contained in Section 14.2(c) of the Act.

- 2) The nature of the petitioner's operations and control equipment;

- 3) Any additional information which may be required in Section 14.2(c) of the Act.

- c) In accordance with 35 Ill. Adm. Code 101.143, the petition shall contain proof of service on owners required to be notified and provided with a copy of the petition as required by Section 14.2(c) of the Act.

## Section 106.603 Response and Reply

- a) *Within 21 days after the filing of a petition, the Agency and any owner required to be notified under Section 14.2(c) shall file a response to any petition in which it has not joined as co-petitioner. The response shall include the comments concerning potential Board action on the petition.*

- b) *The petitioner may file a reply within 14 days after the filing of any response.*

- c) *Such Board orders and opinions will be maintained for public inspection by the Clerk of the Board and a listing of all determinations made pursuant to this Subpart will be published in the Illinois Register and the Environmental Register at the end of each*

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*fiscal year. (Section 28.1 of the Act).*

- d) *A final Board determination made under this Subpart may be appealed pursuant to Section 41 of the Act. (Section 28.1 of the Act).*

## Section 106.604 Notice and Conduct of Hearing

- a) The Board will hold at least one public hearing prior to granting an exception.

- b) The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 102.162.

- c) The proceedings will be in accordance with 35 Ill. Adm. Code 102. Subpart J.

## Section 106.605 Opinions and Orders

- a) *The Board will adopt an Order and Opinion stating the facts and reasons leading to the final Board determination, consistent with any considerations which may be specified in Section 14.2(c) of the Act.*

- b) *The Board will issue such other Orders as the Board deems appropriate, including, but not limited to, accepting or rejecting the petition, requiring the submission of further information or directing that further hearings be held.*

- c) *Such Board orders and opinions will be maintained for public inspection by the Clerk of the Board and a listing of all determinations made pursuant to this Subpart will be published in the Illinois Register and the Environmental Register at the end of each fiscal year. (Section 28.1 of the Act)*

- d) *A final Board determination made under this Subpart may be appealed pursuant to Section 41 of the Act. (Section 28.1 of the Act)*

## SUBPART G: ADJUSTED STANDARDS

## Section 106.701 Applicability

The procedures set forth in this Subpart apply to any person seeking an adjusted standard pursuant to Section 28.1 of the Illinois Environmental Protection Act, (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1001 et seq.), except as otherwise provided in Subparts A, B, C, D, E, and F. This Subpart shall be read in conjunction with 35 Ill. Adm. Code 101 which contains procedures generally applicable to Board proceedings. In a proceeding held pursuant to this Subpart, the requirements of this Subpart shall apply in the event of conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Subpart.

## Section 106.702 Definitions

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For the purpose of this Subpart, words and terms shall have the meanings as defined in 35 Ill. Adm. Code 101.101, unless otherwise provided.

## Section 106.703 Joint or Single Petition

A person begins an adjusted standard proceeding by filing a petition for an Adjusted Standard (petition) either jointly with the Illinois Environmental Protection Agency (Agency) or singly. One original and nine copies of the signed petition shall be filed with the Clerk of the Board. A filing fee shall be paid at the time of the filing of the petition in accordance with the requirements of 35 Ill. Adm. Code 101.120 and 101.122. One copy of the petition shall also be served on the Agency and the Department of Energy and Natural Resources (ENR). Such service on the Agency and ENR shall be initiated on or before the date the petition is filed with the Board and shall be conducted in accordance with 35 Ill. Adm. Code 101.141.

## Section 106.704 Request to Agency to Join as Co-Petitioner

- The Agency may act as a co-petitioner in any adjusted standard proceeding.
- Any person may request Agency assistance in initiating a petition for adjusted standard. In response to a request to act as co-petitioner, the Agency may require the person to submit to the Agency any background information in the person's possession relevant to the adjusted standard which is sought. The Agency shall notify the person in writing of its determination either to join as a co-petitioner, or to decline to join as a co-petitioner. If the Agency declines to join as a co-petitioner, the Agency shall state the basis for this decision.
- Decisions made by the Agency pursuant to this Section are not appealable to the Board.
- Subsequent to the filing of the petition and prior to hearing, the Board will grant the Agency co-petitioner status upon joint motion of the Agency and the petitioner who originally filed the petition.

## Section 106.705 Petition Contents

The petition shall be captioned in accordance with 35 Ill. Adm. Code 101. Appendix A. If the Agency is a co-petitioner, the petition shall so state. The petition shall contain headings corresponding to the informational requirements of each subsection of this Section. The following information shall be contained in the petition:

- A statement describing the standard from which an adjusted standard is sought. This shall include the Administrative Code citation to the regulation of general applicability imposing the standard as well as the effective date of that regulation;

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- A statement which indicates whether the regulation of general applicability was promulgated to implement, in whole or in part, the requirements of the Clean Water Act (33 U.S.C. 1251 et seq. (1988)), Safe Drinking Water Act (42 U.S.C. 300f et seq. (1988)), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq. (1988)), Clean Air Act (42 U.S.C. 7401 et seq. (1988)), or the State programs concerning Resource Conservation and Recovery Act (RCRA), Underground Injection Control (UIC), or National Pollutant Discharge Elimination System (NPDES) (Section 28.1 of the Act);
- The level of justification as well as other information or requirements necessary for an adjusted standard as specified by the regulation of general applicability or a statement that the regulation of general applicability does not specify a level of justification or other requirements (Section 28.1 of the Act);
- A description of the nature of the petitioner's activity which is the subject of the proposed adjusted standard. The description shall include the location of and area affected by the petitioner's activity. This description shall also include the number of persons employed by the petitioner's facility at issue, age of that facility, relevant pollution control equipment already in use, and the qualitative and quantitative nature of emissions, discharges or releases currently generated by the petitioner's activity;
- A description of the efforts which would be necessary if the petitioner were to comply with the regulation of general applicability. All compliance alternatives, with the corresponding costs for each alternative, shall be discussed. The discussion of costs shall include the overall capital costs as well as the annualized capital and operating costs;
- A narrative description of the proposed adjusted standard as well as proposed language for a Board order which would impose the standard. Efforts necessary to achieve this proposed standard and the corresponding costs shall also be presented. Such cost information shall include the overall capital cost as well as the annualized capital and operating costs;
- The quantitative and qualitative impact of the petitioner's activity on the environment if the petitioner were to comply with the regulation of general applicability as compared to the quantitative and qualitative impact on the environment if the petitioner were to comply only with the proposed adjusted standard. To the extent applicable, cross-media impacts shall be discussed. For the purposes of this Section, cross-media impacts shall mean impacts which concern environmental subject areas other than those addressed by the regulation of general applicability and the proposed adjusted standard. Also, the petitioner shall compare the qualitative and quantitative nature of emissions, discharges or releases which would be expected from compliance with the regulation of general



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applicability as opposed to that which would be expected from compliance with the proposed adjusted standard. For the purposes of this subsection, the term qualitative means a narrative description of character, and the term quantitative means a numerically based description;

- h) A statement which explains how the petitioner seeks to justify, pursuant to the applicable level of justification, the proposed adjusted standard;
- i) A statement with supporting reasons that the Board may grant the proposed adjusted standard consistent with federal law. The petitioner shall also inform the Board of all procedural requirements applicable to the Board's decision on the petition which are imposed by federal law and not required by this Subpart. Relevant regulatory and statutory authorities shall be cited;
- j) A statement requesting or waiving a hearing on the petition; and
- k) The petition shall cite to supporting documents or legal authorities whenever such are used as a basis for the petitioner's proof. Relevant portions of such documents and legal authorities other than Board decisions, State regulations, statutes, and reported cases shall be appended to the petition;
- l) If any informational requirement prescribed by subsections (a) through (k) is determined by the petitioner to be either not applicable or unduly burdensome, the petitioner need not fulfill that informational requirement in the petition which is initially filed, provided that an explanation detailing the rationale for such a determination and the determination itself is set forth in the appropriate portion of the petition. If the Board is not convinced that the unfulfilled informational requirement is either not applicable or unduly burdensome, then the Board will require the petitioner to fully comply with the informational requirements set forth by this Section.

Notwithstanding this provision, the Board may require the petitioner to provide the Board with additional material which will aid the Board in its resolution of the adjusted standard proceeding.

## Section 106-706 Petition Verification

All material facts asserted within the petition shall be verified by affidavits. Such affidavits shall be filed with the petition.

## Section 106-707 Federal Procedural Requirements

It shall be the duty of the petitioner to ensure compliance with any procedural requirements identified pursuant to Section 106.705(i) to the extent that such requirements do not require Board action.

## Section 106-708 Incorporated Material

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Incorporation of material from the record of another Board docket shall be accomplished in accordance with 35 Ill. Adm. Code 101.106.

## Section 106-709 Motions

The filing of motions and responses to motions shall be conducted in accordance with 35 Ill. Adm. Code 101.Subpart H.

## Section 106-710 Service of Filings

All filings in an adjusted standard proceeding shall be served upon the petitioner, the Agency, and the ENR as well as other persons as required by the Board or Hearing Officer. Proof of such service shall accompany each filing and shall be of the form as prescribed by 35 Ill. Adm. Code 101.143.

## Section 106-711 Petition Notice

- a) Within fourteen days after the filing of a petition, the petitioner shall cause, at its own expense, the publication of a notice by advertisement in a newspaper of general circulation in the area likely to be affected by the petitioner's activity which is the subject of the adjusted standard proceeding. (Section 28.1 of the Act, Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1028.1). The title of the notice shall be in the form as follows: "Notice of Petition by [petitioner's name] for an Adjusted Standard before the Illinois Pollution Control Board." The notice shall contain the name and address of the petitioner and the statement that the petitioner has filed with the Illinois Pollution Control Board a petition for an adjusted standard. The notice shall also provide the date upon which the petition was filed, the Board docket number, the regulatory standard (with appropriate Administrative Code citation) from which an adjusted standard is sought, the proposed adjusted standard, and a general description of the petitioner's activity which is the subject of the adjusted standard proceeding, and the location of that activity. This information shall be presented so as to be understood in accordance with the context of this Section's requirements. The concluding portion of the notice shall read as follows:

"Any person may cause a public hearing to be held in the above-described adjusted standard proceeding by filing a hearing request with the Illinois Pollution Control Board within 21 days after the date of the publication of this notice. The hearing request should clearly indicate the docket number for the adjusted standard proceeding, as found in this notice, and shall be mailed to the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph, Suite 11-500, Chicago, Illinois 60601."

- c) Subsequent to the filing of a petition, the Board will publish notice

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in the Environmental Register that it has received a petition for an adjusted standard. The notice will include the petitioner's name, filing date, and a brief narrative description of the proposed adjusted standard as well as the standard imposed by the regulation of general applicability (accompanied by the appropriate Administrative Code Citation) from which the adopted standard is sought.

**Section 106.712 Proof of Petition Notice**

Within 30 days after the filing of the petition, the petitioner shall file a certificate of publication, issued by the publisher of the petition notice certifying the publication of that notice. The certificate shall be issued in accordance with Section 1 of "AN ACT to revise the law in relation to notices" (Ill. Rev. Stat. 1987, ch. 100, par. 1).

**Section 106.713 Request for Public Hearing**

Any person can request that a public hearing be held in an adjusted standard proceeding. Such requests shall be filed not later than 21 days after the date of the publication of the petition notice in accordance with subsections (a) and (b) of Section 106.711. Requests for hearing should make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be mailed to the petitioner, Agency, and ENR by the Clerk.

**Section 106.714 Agency Response**

- a) The Agency shall file a response not later than 30 days after the filing of a petition, if the Agency is not a co-petitioner to the petition. The response shall recommend either a grant or denial of the proposed adjusted standard, and it shall set forth rationale which supports the Agency's conclusion. In its response, the Agency may present any information which the Agency believes is relevant to the Board's consideration of the proposed adjusted standard. If the Agency recommends a denial of the petition due to informational deficiencies within the petition, the response shall identify the types of information needed to correct the deficiencies.
- b) At a minimum, the Agency shall address and respond to the petition with respect to each issue raised by the requirements of subsections (a) through (j) of Section 106.705.
- c) The recommendation shall cite to supporting documents or legal authorities whenever such are used as a basis for the Agency's conclusion. Relevant portions of such documents and legal authorities other than Board decisions, State regulations, statutes and reported cases shall be appended to the recommendation if not already in the record of the proceeding.

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**Section 106.715 Amended Petition and Amended Response**

The petitioner may amend its petition prior to the close of the hearing if a hearing is held or prior to the Board's decision if a hearing is not held. Such an amendment shall be in writing and filed with the Board unless made orally at hearing. If the petitioner amends the petition, the Agency shall respond to the amendment in writing or orally at hearing. In any event such an amended response shall be filed or given not later than 30 days subsequent to the amending of a petition. The Agency may amend its response even if the petitioner has not amended its petition. In such an instance, a response may only be amended prior to close of the hearing if a hearing is held or prior to the Board's decision if a hearing is not held. Written amendments to the petition or response need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.

**Section 106.801 Hearing Scheduled**

a) The Board will assign a hearing officer to an adjusted standard proceeding when:

- 1) The Board receives a hearing request, pursuant to Section 106.713, not later than 21 days after the date of the publication of the petition notice in accordance with Section 106.711; or
  - 2) The Board in its discretion determines that a hearing would be advisable. (Section 28.1 of the Act). Such a determination need not be evidenced by a Board opinion or order.
- b) The hearing officer will set a time and place for the hearing. The hearing officer will make an attempt to consult with the petitioner and the Agency prior to the scheduling of a hearing. Hearings are to be held in the county likely to be affected by the petitioner's activity which is the subject of the proposed adjusted standard. (Section 28.1 of the Act).
- c) After the hearing has been scheduled, the hearing officer will notify the Clerk, petitioner, Agency, ENR, and any person who has filed a timely hearing request of the time and place of the hearing.

**Section 106.802 Hearing Notice**

After receiving notification from the hearing officer pursuant to Section 106.801(C), the Clerk shall cause the publication of a hearing notice by advertisement in a newspaper of general circulation in the county in which the hearing is to be held. Such notice shall be published at least 20 days before the date of the hearing. (Section 28.1 of the Act).

**Section 106.803 Pre-hearing Submission of Testimony and Exhibits**

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- a) The hearing officer may require the pre-hearing submission of testimony and exhibits which are to be presented at hearing if the hearing officer determines that such a procedure will provide for a more efficient hearing. Consistent with the petitioner's burden of proof, the hearing officer may provide differing filing deadlines with respect to submissions of different persons. Pursuant to hearing officer order, rebuttal testimony and exhibits may be submitted prior to hearing. When such pre-hearing submission is required, an original and four (4) copies of each testimony and each exhibit shall be filed with the Board. The Agency, petitioner, ENR and any other person as required by the hearing officer shall each be served with one copy of each testimony and exhibit. Such service shall be initiated on or before the date that copies are filed with the Board. All testimony and exhibits shall be bound and labeled with the docket number of the proceeding, the name of the witness submitting the material or exhibit, and the title of the material or exhibit.
- b) Testimony submitted prior to hearing will be entered into the record as if read, unless the hearing officer determines that it will aid public understanding to have the testimony read. All persons testifying will be sworn and will be subject to cross-examination. Modifications to previously submitted testimony and exhibits may be allowed by the hearing officer at hearing provided that such modifications are either non-substantive in nature or would not materially prejudice another person's participation at hearing. Objections to such modifications are waived unless raised at hearing.
- c) If pre-hearing submission of testimony is required, any testimony which is not filed prior to hearing pursuant to subsection (a) will be allowed only as time permits.

**Section 106.804 Discovery**

The issuance of subpoenas and the production of information will be accomplished pursuant to the procedures set forth by 35 Ill. Adm. Code 101.Subpart I.

**Section 106.805 Admissible Evidence**

- a) The hearing officer shall receive evidence which is admissible under the rules of evidence and privilege as applied in the courts of Illinois pertaining to civil actions except as this Section otherwise provides. The hearing officer may admit evidence which is not admissible under such rules if it is relevant and would be relied upon by reasonably prudent persons in the conduct of their affairs. (Ill. Rev. Stat. 1987, ch. 127, par. 1012)
- b) When the admissibility of evidence depends upon an arguable interpretation of substantive law, the hearing officer shall admit

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- c) such evidence.
- c) The hearing officer may order the record or any portion thereof of any relevant pending or prior proceeding before the Board or part thereof incorporated into the record of the present proceeding, in accordance with Section 106.708.
- d) Relevant scientific or technical articles, treatises or materials may be introduced into evidence subject to refutation or disputation through any introduction of comparable documentary evidence or expert testimony.
- e) Any person may testify at hearing provided that the person is sworn and subject to cross-examination. Cross-examination of any person who presents testimony may be conducted by any person. The hearing officer may limit such testimony and cross-examination pursuant to 35 Ill. Adm. Code 101-220.
- f) Information received at hearing will only be considered as substantive evidence in the Board's deliberations if it is presented as an exhibit or direct testimony, or if it is elicited from a person under cross-examination. The Board will not consider, as substantive evidence, information which is presented in the form of a question during cross-examination.

**Section 106.806 Order of Hearing**

The following shall be the order of an adjusted standard hearing subject to modification by the hearing officer:

- a) Presentation, argument, and disposition of motions preliminary to a hearing on the merits of matters raised by the petition and Agency response;
- b) Presentation of opening statements by petitioner, Agency, and any interested person;
- c) Testimony and exhibits by Petitioner;
- d) Testimony and exhibits by Agency;
- e) Testimony and exhibits by interested persons;
- f) Testimony and exhibits by petitioner in rebuttal. This portion of the petitioner's case is limited to the rebutting of evidence presented by the Agency or any interested person during that part of the hearing described by subsections (d) and (e).
- g) Presentation and argument of all motions to be disposed of by the Board;
- h) Presentation of closing statements by the petitioner, Agency, and any interested person; and
- i) A schedule for the submission of post-hearing comments to the Board.

**Section 106.807 Post-hearing Comments**

The petitioner, the Agency, ENR and any interested person may file post-hearing

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comments. The hearing officer may order any person to file such comments. Post-hearing comments shall be filed within fourteen (14) days after the close of the last hearing unless the hearing officer specifies a different date for submission of post-hearing comments. Consistent with the petitioner's burden of proof, the hearing officer may provide for differing filing deadlines with respect to post-hearing comments by different persons. Pursuant to hearing officer order, rebuttal post-hearing comments may be submitted. All post-hearing comments shall present arguments or comments based only on information contained in the record. Such comments may also present legal argument citing legal authorities. The Board will not consider any new information presented by post-hearing comments.

**Section 106.908 Burden of Proof**

The burden of proof in an adjusted standard proceeding is on the petitioner.

**Section 106.901 Board Deliberations**

In making its decision on an adjusted standard petition, the Board shall consider only the record of the adjusted standard proceeding.

**Section 106.902 Dismissal of Petition**

The Board may at any time dismiss a petition for any of the following reasons:

- a) The Board determines that the petition is frivolous, duplicative, or deficient with respect to the requirements of Section 106.705, 106.706, 106.710, and 106.712 (Section 28.1 of the Act); or
- b) The Board determines that the petitioner is not pursuing disposition of the petition in a timely manner. (Section 28.1 of the Act).

**Section 106.903 Board Decision**

A petitioner must justify an adjusted standard consistent with subsection (A) of the Act. (Section 28.1 of the Act.)

- a) If the regulation of general applicability does not specify a level of justification for an adjusted standard, the Board may adopt the proposed adjusted standard if the petitioner proves (Section 28.1 of the Act) that:

- 1) Factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner (Section 28.1 of the Act);
- 2) The existence of those factors justifies an adjusted standard (Section 28.1 of the Act);
- 3) The requested standard will not result in environmental or health effects substantially and significantly more adverse than the

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effects considered by the Board in adopting the rule of general applicability (Section 28.1 of the Act); and

- 4) The adjusted standard is consistent with any applicable federal law (Section 28.1 of the Act).

- b) If the regulation of general applicability specifies a level of justification for an adjusted standard, the Board may adopt the proposed adjusted standard, if the petitioner proves the level of justification specified by the regulation of general applicability.

c) If the regulation of general applicability implements in whole or in part the requirements of the Clean Air Act, the Board will adopt either (Section 28.1 of the Act):

- 1) The proposed adjusted standard if the petitioner proves the applicable level of justification; or
- 2) A standard the same as that imposed by the regulation of general applicability, if the petitioner fails to prove the applicable level of justification. (Section 28.1 of the Act).
- d) In adopting adjusted standards the Board may impose such conditions as may be necessary to accomplish the purposes of the Act (Section 28.1 of the Act).

**Section 106.904 Opinion and Order**

The Board shall issue a written opinion and order which sets forth the Board's decision and supporting rationale. Such opinions and orders shall be maintained for public inspection by the clerk of the Board. (Section 28.1 of the Act).

**Section 106.905 Appeal of Board Decisions**

Any final order or determination of the Board in an adjusted standard proceeding may be appealed to the appellate court pursuant to Section 41 of the Act. (Section 28.1 of the Act).

**Section 106.906 Publication of Adjusted Standards**

- a) Subsequent to the Board's adoption of an adjusted standard, the Board will publish, in the Environmental Register, the name of the petitioner, date of the Order which adopted the adjusted standard, and a brief narrative description of the adopted adjusted standard.
- b) The Board shall cause the publication of a listing of all determinations made pursuant to Section 28.1 of the Act in the Illinois Register and the Environmental Register at the end of each fiscal year. (Section 28.1 of the Act).

**Section 106.907 Effect of Filing a Petition**

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- a) If any person files a petition for an individual adjusted standard in lieu of complying with the applicable regulation within 20 days after the effective date of the regulation, the operation of the regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any regulation shall not be stayed if that regulation was adopted by the Board to implement, in whole or in part, the requirements of the Federal Clean Air Act, Safe Drinking Water Act or Comprehensive Environmental Response, Compensation, and Liability Act, or the State RCRA, UIC or NPDES Programs. (Section 28.1(e) of the Act).
- b) Within 20 days after the effective date of any regulation that implements in whole or in part the requirements of the Clean Air Act, if any person files a petition for an individual adjusted standard in lieu of complying with the regulation, such source will be exempt from the regulation until the Board makes a final determination on the petition. If the regulation adopted by the Board from which the individual adjusted standard is sought replaces a previously adopted Board regulation, the source shall be subject to the previously adopted Board regulation until final action is taken by the Board on the petition. (Section 28.1 of the Act).

## Section 106.910 Applicability

The provisions of this Subpart shall apply to:

- a) Any revocation proceeding initiated by the Agency when it determines that there are grounds to revoke and reissue a CAAFP permit for cause, pursuant to Section 39.5(15)(b) of the Environmental Protection Act (P.A. 87-1213, effective September 26, 1992) (415 ILCS 5/39.5(15)(b)) ("Act"); and
- b) Any reopening proceeding initiated by USEPA when USEPA determines that there are grounds to terminate or revoke and reissue a CAAFP permit for cause, pursuant to Section 39.5(16) of the Act.

## Section 106.911 Definitions

The definitions of 35 Ill. Adm. Code 101.101 and Section 39.5 of the Act shall apply to this Subpart.

## Section 106.912 Petition

- a) Agency Revocation Proceeding
- 1) A revocation proceeding shall be commenced by the Agency by its serving a petition for revocation upon the respondent and filing 10 copies with the Clerk of the Board.
  - 2) The petition shall include the permit record and the grounds for

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- b) the revocation of the CAAFP permit.
- 1) If the Agency receives from USEPA a notice to terminate or revoke and reissue a CAAFP permit for cause, the Agency shall, within 30 days after receipt of USEPA's notice, serve a petition upon the respondent and file 10 copies with the Clerk of the Board.
- 2) The petition shall include USEPA's objection, the permit record, the Agency's proposed determination and the justification for the proposed determination.

## Section 106.913 Response and Reply

- a) The respondent may file a response to the Agency's petition within 21 days after service of the petition.
- b) The Agency may file a reply within 21 days after filing of any response.

## Section 106.914 Notice and Hearing

- a) The Clerk shall give notice of the petition and hearing in accordance with Part 103. The proceeding shall be conducted in accordance with Part 103.
- b) In a hearing, the burden of proof shall be on the Agency.

## Section 106.915 Opinion and Order

- a) Agency Revocation Proceeding
- 1) The Board shall issue a written opinion and order within 120 days after the filing of the petition that sets forth the Board's decision and supporting rationale.
  - 2) If the Board determines that the permit should be revoked and reissued, its final order shall direct the Agency to revoke and reissue the CAAFP permit consistent with Section 39.5 of the Act.
- b) USEPA Reopening Proceeding
- 1) After due consideration of the written and oral statements, the testimony and arguments that shall be submitted at hearing, the Board shall issue and enter an interim order for the proposed determination within 120 days after the filing of the petition, which shall set forth all changes, if any, required in the Agency's proposed determination. The interim order shall comply with requirements for final order as set forth in Section 33 of the Act. Issuance of an interim order by the Board under this subsection (b), however, shall not affect the permit status and does not constitute a final action for purposes of the Act or the Administrative review Law. (Section 39.5(16)(b)(ii) of the Act; see P.A. 88-464, effective August 20, 1993.)



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- 2) The Board shall cause a copy of its interim order to be served upon all parties to the proceeding as well as upon USEPA. The Agency shall submit the proposed determination to USEPA in accordance with the Board's interim order within 180 days after receipt of the notification from USEPA. (Section 39.5(16)(b)(iii) of the Act; see P.A. 88-464, effective August 20, 1993.)

## Section 106.916 USEPA Review of Proposed Determination

- a) If USEPA does not object to the proposed determination within 90 days after receipt, the Board shall, within 7 days after receipt of USEPA's final approval or within 21 days after expiration of the 90-day period, whichever is earlier, enter the interim order as a final order. The final order may be appealed as provided by Title XI of the Act. The Agency shall take final action in accordance with the Board's final order. (Section 39.5(16)(c)(i) of the Act; see P.A. 88-464, effective August 20, 1993.)
- b) USEPA Objection
- 1) If USEPA objects to the proposed determination within 90 days after receipt, the Agency shall submit USEPA's objection and the Agency's comments and recommendation on the objection to the Board and permittee upon receipt of the objection. Within 15 days after receipt of USEPA's objection, the Agency shall submit the Agency's comments and recommendation on the objection to the Board and permittee. (Section 39.5(16)(c)(ii) of the Act; see P.A. 88-464, effective August 20, 1993.)
  - 2) The Board shall review its interim order in response to USEPA's objection and the Agency's comments and recommendation and issue a final order in accordance with Sections 32 and 33 of the Act within 60 days after receipt of the Agency's comments and recommendation on USEPA's objection. The Agency shall, within 90 days after receipt of such objection, respond to USEPA's objection in accordance with the Board's final order. (Section 39.5(16)(c)(iii) of the Act; see P.A. 88-464, effective August 20, 1993.)

## Section 106.920 Applicability

The provisions of this Subpart shall apply to any proceeding initiated by an owner or operator of a CHAPP source pursuant to Section 39.5(19)(a) or (e) of the Environmental Protection Act (P.A. 87-1213, effective September 26, 1992) [415 ILCS 5/39.5(19)(a) and (e)] ("Act") when the Agency has refused to include the emission limitation for a case-by-case maximum achievable control technology ("WACT") determination proposed by the owner or operator of the CHAPP source in the source's CHAPP application.

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## Section 106.921 Definitions

The definitions of 35 Ill. Adm. Code 101.101 and Section 39.5 of the Act shall apply to this Subpart.

## Section 106.922 Petition

- a) A proceeding brought under this Subpart shall be commenced by the owner or operator of a CHAPP source by serving a petition upon the Agency and filing 10 copies with the Clerk of the Board.
- b) A petition filed pursuant to Sections 39.5(19)(a) and (e) of the Act shall include a detailed description of and justification for the emission limitation that is being proposed for the source and an explanation of how such emission limitation provides for the level of control required under Section 112 of the Clean Air Act (42 U.S.C. 7412).
- c) A petition filed pursuant to Section 39.5(19)(a) of the Act shall also request that the Board establish whether the emission limitation proposed by the owner or operator of the CHAPP source provides for the emission limitation equivalent to the emission limitation that would apply to the source if USEPA had promulgated the applicable emission standard pursuant to Section 112(d) of the Clean Air Act (42 U.S.C. 7412(d)) in a timely manner.

## Section 106.923 Response and Reply

- a) The Agency may file a response to the petition of the owner or operator within 21 days after service of the petition.
- b) The owner or operator may file a reply within 21 days after the filing of any response.

## Section 106.924 Notice and Hearing

- a) The Clerk of the Board shall give notice of the petition and any hearing in accordance with Part 103. The proceeding shall be conducted in accordance with Part 103.
- b) The burden of proof in such proceeding shall be on the petitioner.

## Section 106.925 Opinion and Order

- a) The Board shall issue a written opinion and order within 120 days after the filing of the petition that sets forth the Board's decision and supporting rationale.
- b) The Board shall determine whether the emission limitation proposed by the owner or operator of the CHAPP source or an alternative emission limitation proposed by the Agency provides for the level of control



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required under Section 112 of the Clean Air Act (42 U.S.C. 7412), or shall otherwise establish an appropriate emission limitation pursuant to Section 112 of the Clean Air Act.

## SUBPART J: CULPABILITY DETERMINATIONS

## Section 106.930 Applicability

The provisions of this Subpart shall apply to any appeal initiated by an owner or operator of a source pursuant to a finding of culpability by the Illinois Environmental Protection Agency (Agency) under 35 Ill. Adm. Code 212.702.

## Section 106.931 Petition for Review

- a) A proceeding brought under this Subpart shall be commenced by the owner or operator of a source by filing the original and nine copies of a petition for review with the Clerk of the Pollution Control Board (Board). The petitioner shall serve upon the Agency one copy of the petition for review.
- b) General filing and practice rules are set forth in 35 Ill. Adm. Code 102.
- c) A petition for review filed pursuant to this Subpart shall include, but need not be limited to:
  - 1) A copy of the letter, or other written communication, setting forth the Agency's finding of culpability;
  - 2) A clear identification of the county in which the source is located; and
  - 3) A detailed description of, and justification for, the source's position that the Agency's finding of culpability is incorrect.

## Section 106.932 Response and Reply

- a) The Agency shall file a response to a petition appealing a determination of culpability within 21 days after service of the petition.
- b) The Agency's response shall contain, at a minimum, the basis of its determination of the petitioner's culpability, including any meteorological, monitoring, or sampling data upon which the determination was made.
- c) The petitioner may file a reply within 7 days after the service of any response by the Agency.

## Section 106.933 Notice and Hearing

- a) Within 14 days after a petition is filed, the Agency shall publish notice of such petition in a newspaper of general circulation in the

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county in which the source is located. Within 30 days after the filing of the petition, any person may file with the Clerk of the Board a request for hearing on the petition.

- b) The hearing officer will schedule any hearing. The Clerk of the Board shall give notice of the hearing in accordance with 35 Ill. Adm. Code 103. The proceeding shall be conducted in accordance with 35 Ill. Adm. Code 103.
- c) The burden of proof in appeals pursuant to this Subpart is on the petitioner.

## Section 106.934 Opinion and Order

The Board will issue a written opinion and order that sets forth the Board's decision and supporting rationale.

## SUBPART K: INVOLUNTARY TERMINATION OF ENVIRONMENTAL MANAGEMENT SYSTEM AGREEMENTS (EMSAs)

## Section 106.940 Purpose, Applicability

- a) The purpose of this Subpart is to set forth the criteria and procedures under which the Board or the Agency may terminate an EMSA, as defined in Section 106.942 of this Subpart.
- b) When the Agency terminates an EMSA under Section 52.3-4(b) of the Act, only Sections 106.942 and 106.945 of this Subpart apply.
- c) This Subpart, except for Section 106.945, applies to proceedings in which the Board will determine whether to terminate an EMSA.

## Section 106.942 Definitions

For purposes of this Subpart, the words and terms used in this Subpart have the meanings given below. Words and terms not defined in this Subpart, if defined in the Act, have the meanings that the Act provides.

"Act" means the Environmental Protection Act (415 ILCS 5).

"Agency" means the Environmental Protection Agency.

"Board" means the Pollution Control Board.

"Clerk" means the Clerk of the Board.

"Environmental Management System Agreement" or "EMSA" means the agreement between the Agency and a sponsor, entered into under Section 52.3 of the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented, schedules to

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attain goals, and mechanisms for accountability.

"Innovative environmental measures" means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied.

"pilot project" means an innovative environmental project that covers one or more designated facilities, designed and implemented in the form of an EMSA.

"Sponsor" means the proponent of a pilot project that enters into an EMSA with the Agency.

**Section 106.944 Severability**

If any provision of this Subpart is adjudged invalid, or if its application to any person or in any circumstance is adjudged invalid, the invalidity does not affect the validity of this Subpart as a whole, or any Section, subsection, sentence or clause not adjudged invalid.

**Section 106.945 Termination Under Section 52.3-4(b) of the Act**

a) To terminate an EMSA under Section 52.3-4(b) of the Act, the Agency must determine that the sponsor's performance under the EMSA has failed to:

- 1) Achieve emissions reductions or reductions in discharges of wastes beyond the otherwise applicable statutory and regulatory requirements through pollution prevention or other suitable means; or
- 2) Achieve real environmental risk reduction or foster environmental compliance by other persons regulated under this Act in a manner that is clearly superior to the existing regulatory system.

(Section 52.3-1(b) of the Act)

b) If the Agency terminates an EMSA under Section 52.3-4(b) of the Act, the sponsor may, within 35 days after receipt of the Agency's notification of the termination, file an appeal with the Board. Appeals to the Board will be in the manner provided for review of permit decisions in Section 40 of the Act.

**Section 106.946 Who May Initiate, Parties**

- a) Only the Agency may commence a proceeding to terminate an EMSA under this Subpart.
- b) The Agency will be designated the complainant. The sponsor will be designated the respondent.
- c) Misnomer of a party is not a ground for a dismissal; the name of any

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party may be corrected at any time.

**Section 106.948 Notice, Statement of Deficiency, Answer**

a) A proceeding to terminate an EMSA will be commenced when the Agency serves a notice of filing and a statement of deficiency upon the respondent and files 10 copies of the notice of filing and statement of deficiency with the Clerk.

b) The statement of deficiency must contain:

- 1) The stated basis for the respondent's alleged deficient performance under Section 106.954(a) of this Subpart;
- 2) The dates, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate provisions of the Act or regulations, alleged to violate provisions of the Act or regulations, that apply to the pilot project that the EMSA does not address;
- 3) The dates, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate the EMSA; and
- 4) With respect to subsections (b)(1) through (b)(3) of this Section, the statement of deficiency must contain sufficient detail to advise the respondent of the extent and nature of the alleged violations to reasonably allow the respondent to prepare a defense.

c) The respondent must file an answer within 15 days after receipt of the statement of deficiency, unless the Board or the hearing officer extends the 15-day period for good cause. All material allegations of the statement of deficiency will be taken as admitted if not specifically denied by the answer, or if no answer is filed. Any facts that constitute an affirmative defense that would be likely to surprise the complainant must be plainly set forth in the answer before hearing.

**Section 106.950 Service**

a) The Agency must serve a copy of the notice of filing and statement of deficiency either personally on the respondent or the respondent's authorized agent, or by registered or certified mail with return receipt signed by the respondent or the respondent's authorized agent. Proof must be made by affidavit of the person who makes personal service, or by properly executed registered or certified mail receipt. The Agency must file proof of service of the notice of filing and statement of deficiency with the Clerk immediately upon completion of service.

b) The Agency and the respondent must serve all motions and all other notices personally, by First Class United States mail, with sufficient

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rectify the deficient performance; or  
 3) Rejects termination of the EMSA.

- c) The Board may extend the time period under subsection (b)(2) of this Section for good cause.

- d) The Board may order any or all of the following:

- 1) Direct the respondent to cease and desist from violating the Act, the Board's regulations, or the EMSA;
- 2) Require the respondent to provide performance assurance compensation in appropriate amounts;
- 3) Require the respondent to post a sufficient performance bond or other security to assure that the respondent corrects the violation within the time that the Board prescribes;
- 4) Enforce any remedy provision of the EMSA; and
- 5) Order other relief as appropriate.

- e) The Clerk will publish the order and opinion with the vote of each Board Member recorded and will notify the parties required to be notified of the hearing from which the order arose of the order and opinion.

## Section 106.958 Burden of Proof

The Agency has the burden to prove, by a preponderance of the evidence, that there has been deficient performance under the EMSA, as set forth in Section 106.954(a) of this Subpart.

## Section 106.960 Motions, Responses

- a) All motions before a hearing must be presented to the hearing officer at least 10 days before the date of the hearing.

- b) The complainant's motion to voluntarily dismiss an action as to any or all claims must be directed to the Board and may be made orally upon the hearing record, or may be made in writing at any time before the Board issues its decision.

- c) All motions must be served on all parties, including the Agency and its representative and the hearing officer, with proof of service.

- d) Unless made orally on the record during a hearing or unless the hearing officer directs otherwise, a motion must be in writing, must state the reasons for and grounds upon which the motion is made, and may be accompanied by any affidavits or other evidence relied on and, when appropriate, by a proposed order.

- e) Within 7 days after a written motion is served, or another period that the Board or hearing officer may prescribe, a party may file a response to the motion, accompanied by affidavits or other evidence. If no response is filed, the parties will be deemed to have waived objection to the motion, but the waiver of objection does not bind the Board. The moving party does not have the right to reply, except as

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- f) No oral argument will be heard on a motion before the Board unless the Board directs otherwise. A written brief may be filed with a motion or an answer to a motion.

- g) The hearing officer may rule upon all motions, except that the hearing officer has no authority to dismiss, or rule upon a motion to dismiss or decide a proceeding on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike any claim or defense for insufficiency or want of proof.

- h) No interlocutory appeal of a motion may be taken to the Board from a ruling of the hearing officer.

- i) After the hearing, the Board may review the hearing officer's rulings. The Board will set aside the hearing officer's ruling only to avoid material prejudice to the rights of a party. The hearing officer, if a member of the Board, may vote upon motions to review his or her rulings as hearing officer.

- j) Unless the Board orders or this Subpart provides otherwise, the filing of a motion will not stay the proceeding or extend the time to perform any act.

## Section 106.962 Intervention

- a) Upon timely written application and subject to the need to conduct an orderly and expeditious hearing, the hearing officer will permit a person to intervene in an involuntary termination proceeding under this Subpart if the person submitted written comments on the respondent's EMSA or participated in the public hearing on the hearing under the procedures set forth in 35 Ill. Adm. Code 187.404, and is named or listed in the respondent's EMSA as a stakeholder, and if the Board's final order may adversely affect him or her.

- b) The applicant must file 10 copies of a petition to intervene with the Board and serve copies on each party not later than 48 hours before the hearing. The hearing officer may permit a person to intervene at any time before the beginning of the hearing when that person shows good cause for the delay.

- c) An intervenor has all the rights of an original party, except that the intervenor is bound by orders issued before the hearing officer permitted the intervenor to intervene and the intervenor cannot raise issues that were raised or were required to be raised at an earlier stage of the proceeding.

## Section 106.964 Continuances

The hearing officer will grant a motion to continue an involuntary termination proceeding under this Subpart when justice requires. All motions to continue



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must be supported by an affidavit or written motion before the hearing officer by the person or persons with knowledge of the facts that support the motion. However, if the Board determines that any involuntary termination proceeding under this Subpart is not proceeding expeditiously, the Board may order actions that it deems appropriate to expedite the proceeding.

**Section 106.966 Discovery, Admissions**

- a) Discovery, except requests to produce documents, admit facts and state the identity and location of persons with knowledge of facts, as set forth in subsection (b) of this Section, is not permitted unless the hearing officer orders otherwise.
- b) Regarding any matter not privileged, the hearing officer may order a party to produce documents and to state the identity and location of persons with knowledge of facts upon the written request of any party when parties cannot agree on the legitimate scope of the requests. It is not a ground for objection that the documents will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence or is relevant to the subject matter involved in the pending action.
- c) The hearing officer may order a party:
  - 1) To state the identity and location of persons with knowledge of relevant facts.
  - 2) To produce evidence that a party controls or possesses so that it may be inspected, copied or duplicated. The order may grant the right to reasonably inspect the pilot project.

- d) The hearing officer may at any time on his or her own initiative, or on motion of any party or witness, make a protective order as justice requires. The protective order may deny, limit, condition or regulate discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect materials from disclosure by the party who obtains the materials consistent with Sections 7 and 7.1 of the Act.
- e) All objections to rulings of the hearing officer must be made in the record.

- f) Section 106.960(d), (e), (f), (g), (h), (i) and (j) of this Subpart applies regarding procedures to rule on objections.
- g) Failure to comply with any ruling will subject the person to sanctions under 35 Ill. Adm. Code 101, Subpart J.
- h) Request to Admit Facts. A party may serve on any other party, no sooner than 15 days after the Agency files the statement of deficiency, a written request that the latter admit the truth of any specified relevant fact set forth in the request.
- i) Request to Admit to the Genuinehood of Document. A party may serve on any other party, no sooner than 15 days after the Agency files the statement of deficiency, a written request to admit to the genuinehood of any relevant documents described in the request. Copies of the

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document must be served with the request unless copies have already been furnished.

- j) Admission in the Absence of Denial. Each of the matters of fact and the genuinehood of each document of which admission is requested is admitted unless, within 15 days after service under subsection (h) or (i) of this Section, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement that denies specifically the matters on which the admission is requested or that sets forth in detail the reasons why the party cannot truthfully admit or deny those matters or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If a party objects in writing to a part of the request, the remainder of the request must be answered within the period designated in the request. A denial must fairly meet the substance of the requested admission. If good faith requires that a party deny only a part, or requires qualification, of a matter of which an admission is requested, the party must specify so much of it as is true and deny only the remainder. The hearing officer will hear any objection to a request or to an answer upon prompt notice and motion of the party making the request.

- k) Effect of Admission. Any admission made under this Section is for the purpose of the pending action only. It does not constitute an admission by the party for any other purpose and may not be used against the party in any other proceeding.
- l) Expenses of Refusal to Admit. If a party, after being served with a request to admit the genuinehood of any documents or the truth of any matters of fact, serves a sworn denial in response to the request, and if the party requesting the admissions later proves the genuinehood of the document or the truth of the matter of fact, the latter party may apply to the Board for an order, under 35 Ill. Adm. Code 101, Subpart J, for payment of reasonable expenses incurred.

**Section 106.968 Subpoenas**

- a) Upon any party's timely motion to the Board, or on motion of the hearing officer or the Board, the hearing officer or the Board may issue a subpoena to attend a hearing. The subpoena may include a command to produce evidence reasonably necessary to resolve the matter under consideration, subject to this Subpart's limitations on discovery. A copy of the subpoena must be served upon the Clerk. If the witness, other than a respondent or owner or operator of a pilot project, is a non-resident of the State, the order may provide terms and conditions regarding his or her appearance at the hearing that are just, including payment of his or her reasonable expenses.
- b) Every subpoena must state the title of the action and command each



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- person to whom it is directed to attend and give testimony at the time and place specified.
- c) The hearing officer or the Board, upon motion made promptly and in any event at or before the time specified for compliance with the subpoena, may quash or modify the subpoena if it is unreasonable and oppressive.
  - d) Failure of any witness to comply with a Board subpoena will subject the witness to sanctions under 35 Ill. Adm. Code 101, Subpart J.

**Section 106.970 Settlement Procedure**

- a) All parties to any case in which a settlement or compromise is proposed must file with the Clerk before the time of the scheduled hearing a written statement, signed by the parties or their authorized representatives, that outlines the nature of, the reasons for, and the purpose to be accomplished by, the settlement. The statement must contain:
  - 1) A full stipulation of all material facts that pertain to the nature, extent and causes of the alleged violations;
  - 2) The nature of the relevant parties' operations and control equipment;
  - 3) Any explanation for past failures to comply and an assessment of the impact on the public from the failure to comply;
  - 4) Details about future plans for compliance, including a description of additional control measures and the dates on which they will be implemented; and
  - 5) The proposed performance assurance payment, if any.
- b) If an agreed settlement is filed under this Section, the Board may dismiss the case without holding a hearing.

**Section 106.972 Authority of Hearing Officer, Board Members and Board Assistants**

- a) The hearing officer has the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear and complete record. The hearing officer has all powers necessary to these ends including, but not limited to, the authority to:
  - 1) Issue discovery orders;
  - 2) Rule upon objections to discovery orders;
  - 3) Make protective orders as justice requires, which may deny, limit, condition or regulate discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect materials from disclosure by the party who obtains the materials;
  - 4) Administer oaths and affirmations;
  - 5) Rule upon offers of proof, receive evidence and rule upon

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- objections to introducing evidence, subject to Section 106.974(b) of this Subpart;
- 6) Regulate the course of the hearings and the conduct of the parties and their counsel;
  - 7) Examine witnesses solely to clarify the record of the hearing. When any party is not represented by counsel, the hearing officer may examine and cross-examine any witness to insure a clear and complete record. However, the hearing officer may not exclude exhibits or other testimony because of the examination unless all parties agree; and
  - 8) Except as otherwise provided, consider and rule as justice may require upon motions appropriate to an adjudicative proceeding.
  - b) Any Board Member or assistant to a Board Member present at the hearing may advise the hearing officer and may interrogate witnesses but does not have the authority to rule on objections or motions or to overrule the hearing officer during the hearing.

**Section 106.974 Order and Conduct of Hearing**

- a) The following will be the order of all involuntary termination hearings under this Subpart, unless modified by the hearing officer for good cause:
  - 1) Present, argue and dispose of preliminary motions on the matters that the statement of deficiency raises;
  - 2) Present opening statements;
  - 3) Complainant's case in chief;
  - 4) Respondent's case in chief;
  - 5) Complainant's case in rebuttal;
  - 6) Statements from interested citizens, as the hearing officer authorizes;
  - 7) Complainant's opening argument, which may include legal argument;
  - 8) Respondent's closing argument, which may include legal argument;
  - 9) Complainant's closing argument, which may include legal argument;
  - 10) Present and argue all motions before submitting the transcript to the Board; and
  - 11) A schedule to submit briefs to the Board.
- b) All hearings under this Subpart will be public, and any person not a party and not otherwise a witness for a party may submit written statements relevant to the subject matter of the hearing. Any party may cross-examine any person who submits a statement. If the person is not available to be cross-examined upon timely request, the written statement may be stricken from the record. The hearing officer will permit any person to offer reasonable oral testimony whether or not a party to the proceedings.
- c) All witnesses will be sworn.
- d) At the conclusion of the hearing, the hearing officer will make a

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statement about the credibility of witnesses. This statement will be based upon the hearing officer's legal judgment and experience and will indicate whether he or she finds credibility to be at issue in the case and if so, the reasons why. This statement will become a part of the official record and will be transmitted by the hearing officer to each of the parties. No other statement will be made or be appropriate unless the Board orders otherwise.

- 3) Void order.
- c) A motion under this Section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the Board entered the order but the motion is not a continuation of the proceeding. The motion must be supported by affidavit or other appropriate showing as to matters not of record. All parties must be notified under Section 106.950(b) of this Subpart.

## Section 106.976 Evidentiary Matters

- d) This motion must be filed with the Board within 60 days after entry of the order.

The provisions of 35 Ill. Adm. Code 103.204 through 103.210 regarding admissible evidence, written narrative testimony, official notice, viewing premises, admitting business records, examining adverse parties or agents and hostile witnesses and compelling them to appear at hearing, and amendment and variance of pleadings and proof will apply to proceedings under this Subpart.

## Section 106.978 Post-Hearing Procedures

The provisions of 35 Ill. Adm. Code 103.220 through 103.223 regarding default, transcripts, the record, briefs and oral arguments will apply to proceedings under this Subpart.

## Section 106.980 Motion After Entry of Final Order

Within 35 days after the Board adopts a final order, any party may file a motion to rehear, modify or vacate the order or for other relief. Response to the motion must be filed within 14 days after the motion is filed. A motion filed within 35 days stays enforcement of the final order.

## Section 106.982 Relief from Section 106.956 Final Orders

- a) The Board may at any time correct errors in orders or other parts of the record that arise from oversight or omission or clerical mistakes. The Board may do so on its own initiative or on the motion of any party and after notice, if any, as the Board orders. During the pendency of an appeal, the Board may correct the mistakes before the appeal is docketed in the appellate court. While the appeal is pending, the Board may correct the mistakes with leave of the appellate court.
- b) On motion and upon terms that are just, the Board may relieve a party or a party's legal representative from a final order, for the following:
- 1) Newly discovered evidence that by due diligence could not have been discovered in time under Section 106.956 of this Subpart; or
  - 2) Fraud (whether previously denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or

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**Section 106, APPENDIX A Old Rule Numbers Referenced**

The following table is provided to aid in referencing old Board rule numbers to section numbers pursuant to codification.

Chapter 1: Procedural      35 Ill. Adm. Code  
Parts 101-107

Part VI: Hearings Pursuant to  
Specific Rules

Rule 601	Section 106.101
Rule 602	Section 106.102
Rule 603	Section 106.103
Rule 604	Section 106.104
Rule 605	Section 106.105
Rule 606	Section 106.106
Rule 607	Section 106.107
Rule 608-610	Reserved
Rule 611	Deleted
Rule 612	Section 106.201
Rule 613	Section 106.202
Rule 614	Section 106.203
Rules 615-620	Reserved
Rule 621	Deleted
Rule 622	Section 106.301
Rule 623	Section 106.302
Rule 624	Section 106.303
Rule 625	Section 106.304
Rule 627-629	Reserved
	Deleted

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1) Heading of the Part: Proceedings Pursuant to Specific Rules or Statutory Provisions

2) Code Citation: 35 Ill. Adm. Code 106

3) Section Numbers:

Proposed Action:

106.100	New Section
106.102	New Section
106.104	New Section
106.200	New Section
106.202	New Section
106.204	New Section
106.206	New Section
106.208	New Section
106.210	New Section
106.300	New Section
106.302	New Section
106.304	New Section
106.306	New Section
106.308	New Section
106.310	New Section
106.400	New Section
106.402	New Section
106.404	New Section
106.406	New Section
106.408	New Section
106.410	New Section
106.412	New Section
106.414	New Section
106.416	New Section
106.500	New Section
106.502	New Section
106.504	New Section
106.506	New Section
106.508	New Section
106.510	New Section
106.512	New Section
106.514	New Section
106.600	New Section
106.602	New Section
106.604	New Section
106.606	New Section
106.608	New Section
106.610	New Section
106.700	New Section
106.702	New Section

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- 106.704 New Section  
 106.706 New Section  
 106.708 New Section  
 106.710 New Section  
 106.712 New Section  
 106.714 New Section  
 106.716 New Section  
 106.718 New Section  
 106.720 New Section  
 106.722 New Section  
 106.724 New Section  
 106.726 New Section  
 106.728 New Section  
 106.730 New Section  
 106.732 New Section  
 106.734 New Section  
 106.736 New Section  
 106.738 New Section  
 106.740 New Section

4) Statutory Authority: 415 ILCS 5/5, 14.2(c), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5, and 52.3 of the Environmental Protection Act [415 ILCS 5].

5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules and adopt new procedural rules at Parts 101-130. Part 106 contains new rules and modifications of old rules for adjudicatory procedures that grant relief from current regulations or other statutory provisions.

Subpart B contains modifications to existing rules for heated effluent, artificial cooling lake and sulfur dioxide demonstrations. Subpart C contains provisions for water well setback exceptions procedures. ([415 ILCS 5/14.2] (1998))

Also in this Part are procedures for various determinations which had previously been contained in the Board rules pursuant to the Clean Air Act (42 USC 7401 et seq.). Subpart D contains the procedures regarding Agency or USEPA revocation and reopening of CRAPP permits (415 ILCS 5/39.5 (1998)). Subpart E contains procedures for maximum achievable control technology determinations (415 ILCS 5/39.5(15)(a) and (e) (1998)). Subpart F contains procedures for culpability determinations for particulate matter less than or equal to 10 microns (PM-10). Subpart G contains procedures for the involuntary termination of environmental management system agreements (EMSAes) ([415 ILCS 5/52.3-3] (1998)). (The

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rules in this Part appeared in Part 104 of the proposal for public comment, and the rules initially proposed at Part 106 now appear in Part 107.)

- 6) Will these proposed rules replace emergency rules currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed rules contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No

10) Statement of statewide policy objectives: This rulemaking imposes procedural mandates on units of local government to the extent they may appear before the Board.

11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

Clerk's Office  
 Illinois Pollution Control Board  
 100 W. Randolph St., Suite 11-500  
 Chicago IL 60601

Interested persons may request copies of the Board's opinion and order from Patricia Jones at 312-814-3620 or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

Additionally, the Board will hold two hearings on these rules. The first hearing will be April 11, 2000 at 1:30 p.m. in:

Illinois Pollution Control Board  
 Hearing Room 403  
 600 S. Second Street  
 Springfield IL

The second hearing will be May 4, 2000 at 1:30 p.m. in:

James R. Thompson Center  
 Room 9-040  
 100 W. Randolph Street  
 Chicago IL

12) Initial regulatory flexibility analysis:

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- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking affects those small businesses, small municipalities, and not-for-profit corporations that appear before the Board.
- B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments do not require extensive reporting, bookkeeping or other procedures.
- C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.

13) Regulatory Agenda on which this rulemaking was summarized: January 2000  
The full text of the proposed rule begins on the next page:

POLLUTION CONTROL BOARD  
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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

PART 106  
PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS  
SUBPART A: GENERAL PROVISIONS

Section  
106.100 Applicability  
106.102 Severability  
106.104 Definitions

SUBPART B: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE, AND SULFUR  
DIOXIDE DEMONSTRATIONS

Section  
106.200 General  
106.202 Petition Requirements  
106.204 Additional Petition Requirements in Sulfur Dioxide Demonstration  
106.206 Notice  
106.208 Agency Recommendation and Petitioner Response  
106.210 Burden of Proof

SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

Section  
106.300 General  
106.302 Initiation of Proceeding  
106.304 Petition Content Requirements  
106.306 Response and Reply  
106.308 Hearing  
106.310 Burden of Proof

SUBPART D: REVOCATION OF CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMITS

Section  
106.400 General  
106.402 Definitions  
106.404 Initiation of Proceedings  
106.406 Petition Content Requirements  
106.408 Response and Reply  
106.410 Hearing  
106.412 Burden of Proof  
106.414 Opinion and Order



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## 106.416 USEPA Review of Proposed Determination

## SUBPART E: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY DETERMINATIONS

## Section

106.500

General

106.501

Definitions

106.502

Initiation of Proceedings

106.504

Petition Content Requirements

106.506

Response and Reply

106.508

Hearing

106.510

Burden of Proof

106.512

Board Action

106.514

SUBPART F: CULPABILITY DETERMINATIONS FOR PARTICULATE MATTER  
LESS THAN OR EQUAL TO 10 MICRONS (PM-10)

## Section

106.600

General

106.601

Initiation of Proceeding

106.602

Petition Content Requirements

106.604

Response and Reply

106.606

Hearing

106.608

Burden of Proof

106.610

SUBPART G: INVOLUNTARY TERMINATION OF ENVIRONMENTAL  
MANAGEMENT SYSTEM AGREEMENTS (EMSGAs)

## Section

106.700

Purpose

106.701

Applicability

106.702

Termination Under Section 52.3-4(b) of the Act

106.704

Who May Initiate, Parties

106.706

Notice, Statement of Deficiency, Answer

106.707

Service

106.708

Notice of Hearing

106.710

Deficient Performance

106.712

Board Decision

106.714

Burden of Proof

106.716

Motions, Responses

106.718

Intervention

106.720

Continuances

106.722

Discovery, Admissions

106.724

Subpoenas

106.726

Settlement Procedure

106.728

Authority of Hearing Officer, Board Members, and Board Assistants

106.730

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## 106.732

Order and Conduct of Hearing

106.734

Evidentiary Matters

106.736

Post-Hearing Procedures

106.738

Motion After Entry of Final Order

106.740

Relief From Final Orders

**AUTHORITY:** Implementing and authorized by Sections 5, 14.2.(c), 22.4, 26, 27, 28, 28.1, 28.5 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act. [415 ILCS 5/5]

**SOURCE:** Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1978; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40, PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 106.100 Applicability

- a) This Part applies to adjudicatory proceedings pursuant to specific rules or statutory provisions. Specifically, the Part applies to heated effluent, artificial cooling lake and sulfur dioxide demonstrations, water well setback exception procedures, revocation and reopening of CAAPP permits, maximum achievable control technology determinations, culpability determinations for particulate matter less than or equal to 10 microns, and the involuntary termination of environmental management system agreements.
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101 which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

## Section 106.102 Severability

If any provision of this Part or its application to any person is adjudged invalid such adjudication does not affect the validity of this Part as a whole or of any petition not adjudged invalid.

## Section 106.104 Definitions

For the purpose of this Subpart, words and terms will have the meaning as

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defined in 35 Ill. Adm. Code 101.Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

**SUBPART B: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE, AND SULFUR DIOXIDE DEMONSTRATIONS**

**Section 106-200 General**

a) Description

- 1) Heated Effluent Demonstration
  - A) The owner or operator of a source of heated effluent that discharges 150 megawatts (0.5 billion British thermal units per hour) or more must demonstrate in an adjudicatory proceeding before the Board, pursuant to 35 Ill. Adm. Code 302.211(f), that discharges from that source have not caused and cannot be reasonably expected to cause significant ecological damage to the receiving waters.
  - B) The owner or operator must make the demonstration under subsection (a)(1)(A) of this Section not less than 5 years nor more than 6 years after operations commence.
  - C) If the Board finds that the proof of the owner or operator under subsection (a)(1)(A) of this Section is inadequate, the Board's order will include, but not be limited to, a requirement that the owner or operator perform appropriate corrective measures within a reasonable time as determined by the Board.
- 2) Artificial Cooling Lake Demonstration
  - A) If a discharger wishes to have the Board establish specific thermal standards for its discharge to an artificial cooling lake pursuant to 35 Ill. Adm. Code 302.211(j)(5) that would apply to the discharge in lieu of the applicable provisions of the thermal water quality standards set forth in 35 Ill. Adm. Code 302.211 and 303, the discharger must demonstrate in an adjudicatory proceeding before the Board, pursuant to 35 Ill. Adm. Code 302.211(j)(3), that the artificial cooling lake receiving the heated effluent will be environmentally acceptable and within the intent of the Act.
  - B) If the Board finds that the proof of the discharger under subsection (a)(2)(A) of this Section is adequate, the Board will establish, pursuant to 35 Ill. Adm. Code 302.211(j)(5), specific thermal standards to be applied to the discharge to the artificial cooling in lieu of the applicable provisions of the thermal water quality standards set forth in 35 Ill. Adm. Code 302.211 and 303.
  - C) A Board order providing alternate thermal standards under subsection (a)(2)(B) of this Section will include, but not

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be limited to, the following conditions:

- i) Pursuant to 35 Ill. Adm. Code 302.211(j)(1), all discharges from the artificial cooling lake to other waters of the State must comply with the applicable provisions of 35 Ill. Adm. Code 302.211(b) through (e); and
- ii) Pursuant to 35 Ill. Adm. Code 302.211(j)(2), the heated effluent discharged to the artificial cooling lake must comply with all applicable provisions of 35 Ill. Adm. Code Subtitle C, Chapter I, except 35 Ill. Adm. Code 302.211(b) through (e).
- 3) Sulfur Dioxide Demonstrations. Any owner or operator of a fuel combustion emission source may petition the Board, pursuant to 35 Ill. Adm. Code 214.185 and this Subpart, for approval of substitute standards from those set forth in 35 Ill. Adm. Code 214.183 and 214.184.
- b) Initiation of Proceeding. The owner or operator may initiate a heated effluent, artificial cooling lake or sulfur dioxide demonstration by filing with the Clerk a petition in accordance with this Subpart.
- c) Parties. The owner or operator must be named the petitioner and the Agency must be named the respondent.
- d) Filing and Service. Filing and service must be in accordance with 35 Ill. Adm. Code 101.Subpart C.

**Section 106-202 Petition Requirements**

- a) Heated Effluent Demonstration. The petition must include, where applicable, the following information but may include additional information that the petitioner believes will be relevant to the proceeding:
  - 1) General Plant Description:
    - A) Generating capacity;
    - B) Type of fuel used;
    - C) Operating characteristics of the condenser cooling system;
    - D) History of the load factor of the plant for the time during which the plant has operated, but for no more than the last 5 years;
    - E) Projected load factors for the life of the plant;
    - F) Estimated date of retirement for each unit at the plant and any plans for additional units at the plant;
    - G) History of plant shutdowns; and
    - H) Planned, emergency, and projected shutdowns with frequency and duration.
  - 2) Description of Method for Heat Dissipation:
    - A) Type of system used (such as once-through, mechanical, and draft cooling towers) in narrative form; and

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- B) Summary information on temperature of discharge to receiving waters in narrative form.
- 3) Plume Studies:
- Actual plume studies in the last 5 years correlated with plant operation and meteorological conditions;
  - Theoretical plume studies for all four seasons for typical and worst case conditions. Worst case conditions must be identified as worst conditions of plant load factors, precipitation, ambient water temperature, air temperature; such studies must consider the frequency of occurrence and their joint probabilities of occurrence; and
  - Theoretical plume studies that identify isotherms at 30 Fahrenheit (1.70 Centigrade) intervals down to ambient temperature indicating three dimensional effects.
- 4) A demonstration that discharges from the source of heated effluent have not caused and cannot be reasonably expected to cause significant ecological damage to the receiving waters, including:
- Biological studies in the last 5 years on receiving waters, including species studied, location of studies, and conclusions reached, including conclusions as to both the lethal and sublethal effects of the thermal discharge;
  - The impact on other animal life (such as waterfowl and amphibians) in the area as a result of the thermal discharge; and
  - Secondary considerations
    - Possible and known impact on recreation from thermal discharges; and
    - Management practices employed or planned in order to limit the effect of any environmental harm established under this subsection (a)(4).
- D) The demonstration required under this subsection (a)(4) may take any of the forms described in subsection (b)(2) of this Section.
- 5) A citation to any prior proceedings, in which the petitioner was a party, brought pursuant to 35 Ill. Adm. Code 302.211(f) or (j)(3).
- b) Artificial Cooling Lake Demonstration. The petition must include, where applicable, the following information but may include additional information that the petitioner believes will be relevant to the proceeding:
- A demonstration that the artificial cooling lake receiving the heated effluent will be environmentally acceptable and within the intent of the Act, including:
    - Provision of conditions capable of supporting shellfish, fish and wildlife, and recreational uses consistent with

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- good management practices; and
- B) Control of the thermal component of the discharger's effluent by a technologically feasible and economically reasonable method.
- 2) The demonstration required under subsection (b)(1) of this Section may take the form of any of the following:
- A final environmental impact statement;
  - Pertinent provisions of environmental assessments used to prepare the final environmental impact statement; or
  - A showing pursuant to Section 316(a) of the Clean Water Act [33 USC 1326].
- 3) A citation to any prior proceedings, in which the petitioner was a party, brought pursuant to 35 Ill. Adm. Code 302.211(f) or (j)(3).
- c) Sulfur Dioxide Demonstration. The petition must include but not be limited to the following information:
- An explicit statement of the site-specific emission limitation (in pounds of sulfur dioxide per million British Thermal Units (btu) actual heat input and total pounds of sulfur dioxide per hour) that is proposed for the facility.
  - Emission Sources Description:
    - The diameter, height, exit gas temperature, and exit gas velocity for all stacks or vents through which sulfur dioxide is emitted into the atmosphere;
    - A description of the fuels used including type, ultimate analysis, sulfur content, and heat content;
    - A description of the type of fuel combustion equipment including method of firing and size (in million btu per hour capacity);
    - A topographic map of terrain within 30 miles of the emission source(s);
    - A specific description of the location of the emission sources, including a plot plan; and
    - A specific description of the operating conditions which produce maximum sulfur dioxide emissions.
  - A summary of any and all ambient air quality data collected by the owner or operator of the source(s) since January 1, 1973. The summary must include annual averages; maximum and second-highest one-hour, three-hour, and 24-hour averages for each month; and the number of times the three-hour and 24-hour sulfur dioxide standards were exceeded during each month.
  - A summary of any and all meteorological data collected by the owner or operator of the source(s) since January 1, 1973, if such data are used in the development of the site-specific emission standard.
  - A complete description of and justification for all dispersion

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models and plume rise equations that are used to develop the site-specific emission limitation including all model equations.

6) A description of and justification for the use of all data that were inputs to the dispersion and plume rise formula used to establish the site-specific emission standard. The description and justification must cover, as a minimum, the following input data:

- A) Stack diameters, stack heights, exit gas temperatures, and exit gas velocities for all stacks and vents emitting sulfur dioxide at the subject facility as well as for any other sources of sulfur dioxide that were modeled;
  - B) All sulfur dioxide emission sources that were modeled; and
  - C) All meteorological data.
- 7) Calculated maximum ground-level concentrations using the following method, or such other method (or modification of the hereinafter stated method) that the petitioner proves to the satisfaction of the Board to be acceptable.

## A) Selection of simulation model:

- i) Gaussian models that allow the input of hourly meteorological data must be used which are appropriate for the specific location and type of source(s) in question.
- ii) Dispersion models presented in "Guidelines on Air Quality Models" (EPA-450/2-78-027), as amended from time to time, or those deemed by the Board to be equivalent to these models must be used for detailed air quality studies.

## B) Selection of meteorological data and stack parameters:

- i) The most recent 5 years of hour-by-hour meteorological data reasonably available, including wind speed, wind direction, atmospheric stability, mixing height and surface temperature must be used, unless the petitioner demonstrates that one of the 5 years causes substantially higher concentrations than the other four, in which case detailed analyses conducted for only that "worst case" year would be acceptable. Notwithstanding the previous sentence, one year of on-site data may be used in lieu of the 5-year data requirement;
- ii) Data must be from the nearest, representative, quality controlled meteorological collecting site; and
- iii) Stack parameters (including emission rate, stack height, stack diameter, exit velocity, and exit temperature) must reflect the maximum operating rate for comparison with the 24-hour and 3-hour sulfur dioxide standards.

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## C) Receptors:

- i) Receptors must be located so as to ensure that the source's maximum impact is detected;
- ii) The determination of the receptor grid must be fully documented in the modeling study;

## D) Special conditions:

- i) All special conditions that may affect the dispersion of the effluent plume, including local terrain effects and aerodynamic downwash, must be considered in the modeling study;
- ii) If terrain is a factor in the vicinity of the source, a model capable of handling variable-height receptors must be used; and
- iii) If the computed height of the effluent plume is less than 2.5 times the height of nearby buildings or local obstructions, aerodynamic downwash must be studied and considered as a possible factor in the dispersion of that effluent.

E) Determination of violation: The determination of whether an applicable air quality increment or standard is being violated must be based on the second highest predicted concentration over the receptor grid for short-term averaging times and on the highest predicted concentration for annual averaging times. However, if only one year of meteorological data is used in the short-term analysis, then the highest-predicted concentration may be compared to the applicable standard to determine whether a violation has occurred.

F) Other sources: Effects of other sources of sulfur dioxide must be taken into account in the modeling study. Methods by which other sources of sulfur dioxide may be accounted are as follows:

- i) An acceptable method is to estimate the "background" from monitoring data which has been subjected to adequate quality control where available. When monitored data is used, the background must be estimated using monitoring days with meteorological conditions similar to those identified as "worst case" for the source in question; or
- ii) If monitoring data is not available, then all sources of sulfur dioxide having a significant impact in the area of the source's impact area must be used in the simulation model. These sources of sulfur dioxide must also be modeled at their maximum allowable emission rate for any studies addressing 24-hour or 3-hour averaging times.



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- 8) Estimates of the frequency, characteristics, probable time of occurrence, and duration of the meteorological conditions associated with the maximum ground-level concentration of sulfur dioxide to which the facility under study contributes. A description of the techniques used in arriving at the above estimates must be included.
- 9) Background concentrations that were determined for all meteorological conditions required to be examined under subsection (c)(7) of this Section and for any other meteorological conditions considered in the development of the alternative standard.
- 10) A description of the method that was used to determine background sulfur dioxide concentrations in the vicinity of the subject facility for each of the meteorological conditions required to be examined under subsection (7) of this Section and for any additional meteorological conditions considered in developing the alternative standard.
- 11) An evaluation and calibration of the dispersion model if air quality monitoring data were available to perform such evaluation and calibration.

#### Section 106.204 Additional Petition Requirements in Sulfur Dioxide Demonstrations

In addition to meeting the petition contents requirements of Section 106.202(c) of this Part the petitioner must ensure that the procedural requirements of 40 CFR 51.4 (1977) are met and, at least 30 days prior to the date of the hearing, petitioner must:

- a) Give notice to the public by prominent advertisement in the Air Quality Control Region affected announcing the date, time and place of such hearing;
- b) Make available a copy of the petition for public inspection in at least one location in the Air Quality Control Region in which the source is located;
- c) Notify the Administrator of USEPA (through the appropriate Regional Office);
- d) Notify each local air pollution control agency located within the affected Air Quality Control Region; and
- e) Notify, in the case of an Interstate Air Quality Control Region, any air pollution control agencies of other states included, in whole or in part, in the Region.

#### Section 106.206 Notice

The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.602. The proceedings must be in accordance with 35 Ill.

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Adm. Code 101.Subpart F.

#### Section 106.208 Agency Recommendation and Response

The Agency must file a recommendation on a petition under this Subpart as prescribed below. The petitioner or any other party to the proceeding may file a response to the Agency recommendation within 14 days after service of the petition. Any person other than a party to the proceeding may file a response to the Agency recommendation within 14 days after the Agency files the recommendation.

- a) Heated Effluent Demonstration
  - 1) Within 60 days after the owner or operator files the petition, the Agency must make a recommendation to the Board on the petition. The recommendation may include, but is not limited to:
    - A) A description of the Agency's efforts in conducting its review of the petition;
    - B) The Agency's conclusion as to whether discharges from the source have caused or can reasonably be expected to cause significant ecological damage to the receiving waters;
    - C) The factual basis for the Agency's conclusion;
    - D) Any corrective measures that the Agency recommends be taken and the recommended time period to implement the measures; and
  - E) The Agency's recommendation on how the Board should dispose of the petition.
- b) Artificial Cooling Lake Demonstration
  - 1) Within 60 days after the owner or operator files the petition, the Agency must make a recommendation to the Board on the petition. The recommendation may include, but is not limited to:
    - A) A description of the Agency's efforts in conducting its review of the petition;
    - B) The Agency's conclusion as to whether the artificial cooling lake receiving the heated effluent will be environmentally acceptable and within the intent of the Act;
    - C) The factual basis for the Agency's conclusion; and
    - D) The Agency's recommendation on how the Board should dispose of the petition.
  - c) Sulfur Dioxide Demonstration
    - 1) Within 90 days after the filing of the petition the Agency must make a recommendation to the Board as to be proposed site-specific emission limitation. Such recommendation may include, but is not limited to, the following:
      - A) A description of the efforts made by the Agency in conducting its review;
      - B) The Agency's conclusion as to whether the proposed site-specific emission limitation is adequate to prevent



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- violations of the Primary and Secondary Sulfur Dioxide and Ambient Air Quality Standards; and
- C) The Agency's conclusion as to what disposition should be made of the petition.

**Section 106.210 Burden of Proof**

The burden of proof will be on the petitioner.

**SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES****Section 106.300 General**

- a) Description. This Subpart applies to any owner of a new potential route, a new potential primary source other than landfilling or land treating, or new potential secondary source who files a petition for an exception from the setback requirements of Sections 14.2 and 14.3(e) of the Act pursuant to Section 14.2(c) of the Act and this Subpart. [415 ILCS 5/14.2(c)]
- b) Parties. The owner filing the petition for an exception must be named the petitioner and the Agency must be named the respondent. Affected well owners who are not petitioners also must be named respondents.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

**Section 106.302 Initiation of Proceeding**

- a) The petitioner must file the petition for exception with the Clerk of the Board, and must serve one copy upon the Agency.
- b) The petitioner must notify and provide a copy of the petition to the owners of each potable water supply for which the setback requirements would be affected by the exception.

**Section 106.304 Petition Content Requirements**

The petition must contain the following information:

- a) A written statement, signed by the petitioner or an authorized representative, outlining the scope of the evaluation, the nature of, the reasons for, and the basis of the exception, consistent with the burden of proof contained in Section 106.310 of this Part;
- b) The nature of the petitioner's operations and control equipment;
- c) Proof of service on owners required to be notified and provided with a copy of the petition as required by Section 106.302(b) of this Part, 35 Ill. Adm. Code 101, and Section 14.2(c) of the Act; and
- d) Any other information which may be required by Section 14.2 of the Act.

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**Section 106.306 Response and Reply**

- a) Within 21 days after the filing of a petition, the Agency and any owner required to be notified may file a response to any petition in which it has not joined as co-petitioner. The response must include the comments concerning potential Board action on the petition.
- b) The petitioner may file a reply within 14 days after the service of any response.

**Section 106.308 Hearing**

The Board will hold at least one public hearing in an exception proceeding. The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be in accordance with 35 Ill. Adm. Code 101.Subpart F.

**Section 106.310 Burden of Proof**

The burden of proof is on the petitioner. The petitioner must demonstrate that:

- a) Compliance with the setback requirements of Section 14.2 or 14.3(e) of the Act would pose an arbitrary and unreasonable hardship;
- b) The petitioner will utilize the best available control technology economically achievable to minimize the likelihood of contamination of the potable water supply well;
- c) The maximum feasible alternative setback will be utilized; and
- d) The location of such potential route will not constitute a significant hazard to the potable water supply well.

**SUBPART D: REVOCATION AND REOPENING OF  
CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMITS****Section 106.400 General**

- a) Description. The provisions of this Subpart will apply to:
- 1) Any revocation proceeding initiated by the Agency when it determines that there are grounds to revoke and reissue a Clean Air Act Permit Program (CAAPP) permit for cause, pursuant to Section 39.5(15)(b) of the Act; and
  - 2) Any reopening proceeding initiated by the Agency pursuant to a notice that there are grounds to terminate or revoke and reissue a CAAPP permit for cause, pursuant to Section 39.5(16) of the Act.
- b) Parties.
- 1) In a revocation proceeding initiated by the Agency, the Agency will be named as petitioner and the holder of the CAAPP will be

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named as respondent.

- 2) In a reopening proceeding initiated by the Agency, the Agency will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise. If there is a conflict, the definitions of Section 39.5 of the Act will apply.

- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

**Section 106.402 Definitions**

The definitions of 35 Ill. Adm. Code 101.Subpart B and Section 39.5 of the Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise. If there is a conflict, the definitions of Section 39.5 of the Act will apply.

**Section 106.404 Initiation of Proceedings**

- a) Agency revocation proceeding. The Agency may initiate a revocation proceeding before the Board by serving a petition for revocation upon the respondent and filing the petition with the Board.
- b) USEPA reopening proceeding. If the Agency receives from USEPA a notice to terminate or revoke and reissue a CARPP permit for cause, the Agency must, within 30 days after receipt of USEPA's notice, serve a petition upon the respondent and file the petition with the Board.

**Section 106.406 Petition Content Requirements**

- a) Agency revocation proceeding. The petition in a revocation proceeding must include:
  - 1) The grounds for the revocation of the CARPP permit;
  - 2) The associated permit record; and
  - 3) Any other information necessary to establish that the CARPP permit should be revoked.
- b) USEPA reopening proceeding. The petition in a reopening proceeding must include:
  - 1) USEPA notice to terminate or revoke and reissue a CARPP permit for cause that initiated the matter;
  - 2) The associated permit record; and
  - 3) The Agency's proposed determination and the justification for the proposed determination.

**Section 106.408 Response and Reply**

- a) The respondent may file a response to the Agency's petition within 21 days after service of the petition.
- b) The Agency may file a reply within 21 days after filing of any response.

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**Section 106.410 Hearing**

The Board will hold at least one public hearing in the county where the CARPP source is located. The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding must be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

**Section 106.412 Burden of Proof**

- a) Agency revocation proceeding. The burden of proof will be on the Agency to establish that the permit should be revoked under the standards set forth in this Act and the Clean Air Act.
- b) USEPA reopening proceeding. The burden of proof will be on the Agency.

**Section 106.414 Opinion and Order**

- a) Agency revocation proceeding:

- 1) The Board will issue a written opinion and order within 120 days after the filing of the petition that sets forth the Board's decision and supporting rationale.

- 2) If the Board determines that the permit should be revoked and reissued, its final order will direct the Agency to revoke and reissue the CARPP permit consistent with Section 39.5 of the Act.

- b) USEPA reopening proceeding:

- 1) After due consideration of the written and oral statements, the testimony and arguments that shall be submitted at hearing, the Board shall issue and enter an interim order for the proposed determination within 120 days after the filing of the petition, which shall set forth all changes, if any, required in the Agency's proposed determination. The interim order shall comply with requirements for final order as set forth in Section 33 of this Act. Issuance of an interim order by the Board under this subsection (b), however, shall not affect the permit status and does not constitute a final action for purposes of this Act or the Administrative Review Law. [415 ILCS 5/39.5(16)(b)(iii)]
- 2) The Board shall cause a copy of its interim order to be served upon all parties to the proceeding as well as upon USEPA. The Agency shall submit the proposed determination to USEPA in accordance with the Board's interim order within 180 days after receipt of the notification from USEPA. [415 ILCS 5/39.5(16)(b)(iii)]

**Section 106.416 USEPA Review of Proposed Determination**

- a) If USEPA does not object to the proposed determination within 90 days

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after receipt, the Board will, within 7 days after receipt of USEPA's final approval or within 21 days after expiration of the 90-day period, whichever is earlier, enter the interim order as a final order. The final order may be appealed as provided by Title XI of the Act. The Agency must take final action in accordance with the Board's final order.

- b) USEPA Objection.
- 1) If USEPA objects to the proposed determination within 90 days after receipt, the Agency shall submit USEPA's objection and the Agency's comments and recommendation on the objection to the Board and permittee upon receipt of the objection. Within 15 days after receipt of USEPA's objection, the Agency must submit the Agency's comments and recommendation on the objection to the Board and permittee. [415 ILCS 5/39.5(16)(c)(ii)]
  - 2) The Board shall review its interim order in response to USEPA's objection and the Agency's comments and recommendation and issue a final order in accordance with Sections 32 and 33 of this Act within 60 days after receipt of the Agency's comments and recommendation on USEPA's objection. The Agency shall, within 90 days after receipt of such objection, respond to USEPA's objection in accordance with the Board's final order. [415 ILCS 5/39.5(16)(c)(ii)]

USEPA Objection.

1) If USEPA objects to the proposed determination within 90 days after receipt, the Agency shall submit USEPA's objection and the Agency's comments and recommendation on the objection to the Board and permittee upon receipt of the objection. Within 15 days after receipt of USEPA's objection, the Agency must submit the Agency's comments and recommendation on the objection to the Board and permittee. [415 ILCS 5/39.5(16)(c)(ii)]

2) The Board shall review its interim order in response to USEPA's objection and the Agency's comments and recommendation and issue a final order in accordance with Sections 32 and 33 of this Act within 60 days after receipt of the Agency's comments and recommendation on USEPA's objection. The Agency shall, within 90 days after receipt of such objection, respond to USEPA's objection in accordance with the Board's final order. [415 ILCS 5/39.5(16)(c)(ii)]

SUBPART E: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY DETERMINATIONS

Section 106.500 General

- a) Description. The provisions of this Subpart will apply to any proceeding initiated by an owner or operator of a CAAPP source pursuant to Section 39.5(19)(a) or (e) of the Act challenging the Agency's determination not to utilize the hazardous air pollutant emission limitation proposed by the CAAPP source or the hazardous air pollutant limitation for a case-by-case maximum achievable control technology (MACT) proposed by the CAAPP source.
- b) Parties. The owner or operator of the CAAPP source who initiates the proceeding must be named as petitioner and the Agency must be named as respondent.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

Section 106.502 Definitions

The definitions of 35 Ill. Adm. Code 101.Subpart B and Section 39.5 of the Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise. If there is a conflict, the definitions of 39.5

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of the Act will apply.

Section 106.504 Initiation of Proceedings

The owner or operator of a CAAPP source may initiate a proceeding before the Board by serving a petition upon the Agency and filing with the Clerk of the Board.

Section 106.506 Petition Content Requirements

- A petition filed pursuant to Sections 39.5(19)(a) and (e) of the Act must include:
- a) A detailed description of and justification for the emission limitation that is being proposed for the source and an explanation of how such emission limitation provides for the level of control required under Section 112 of the CAA (42 USC 7412);
  - b) A petition filed pursuant to Section 39.5(19)(a) of the Act must also include justification for the Board to determine whether the emission limitation proposed by the owner or operator of the CAAPP source provides for the emission limitation equivalent to the emission limitation that would apply to the source if USEPA had promulgated the applicable emission standard pursuant to Section 112(d) of the CAA (42 USC 7412(d)) in a timely manner; and
  - c) The Agency's notification of its refusal to adopt the CAAPP source's proposed emission limitation or the CAAPP source's MACT determination.

Section 106.508 Response and Reply

- a) The Agency may file a response to the petition of the owner or operator within 21 days after service of the petition.
- b) The owner or operator may file a reply within 21 days after the filing of any response.

Section 106.510 Hearing

The Board will hold at least one public hearing in the county where the CAAPP source is located. The Clerk of the Board will give notice of the petition and any hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

Section 106.512 Burden of Proof

The burden of proof will be on the petitioner to demonstrate that the emission limitation provides for the level of control required under Section 112 of the Clean Air Act.

Section 106.514 Board Action

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*The Board shall determine whether the emission limitation proposed by the owner or operator or an alternative emission limitation proposed by the Agency provides for the level of control required under Section 112 of the Clean Air Act, or shall otherwise establish an appropriate emission limitation, pursuant to Section 112 of the Clean Air Act. [415 ILCS 5/39-5(19)(a) and (e)]*

SUBPART F: CULPABILITY DETERMINATIONS FOR PARTICULATE MATTER  
LESS THAN OR EQUAL TO 10 MICRONS (PM-10)

## Section 106.600 General

- a) Description. The provisions of this Subpart will apply to any appeal initiated under 35 Ill. Adm. Code 212.702 by an owner or operator of a source pursuant to a finding of culpability for an exceedance of the 24-hour ambient air quality standard for particulate matter less than or equal to ten (10) microns (PM-10) at 35 Ill. Adm. Code 243.120 by the Agency.
- b) Parties. The owner or operator of a source who initiated the proceeding will be named as the petitioner and the Agency will be named as respondent.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

## Section 106.602 Initiation of Proceedings

The owner or operator of a source may initiate a proceeding before the Board by serving a petition for review of the Agency culpability determination and filing with the Clerk of the Board.

## Section 106.604 Petition Content Requirements

A petition for review filed pursuant to this Subpart must include, but need not be limited to:

- a) A copy of the letter, or other written communication, setting forth the Agency's finding of culpability;
- b) A clear identification of the county in which the source is located; and
- c) A detailed description of, and justification for, the source's position that the Agency's finding of culpability is incorrect.

## Section 106.606 Response and Reply

- a) The Agency must file a response to a petition appealing a determination of culpability within 21 days after service of the petition.
- b) The Agency's response must contain, at a minimum, the basis of its

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determination of the petitioner's culpability, including any meteorological, monitoring, or sampling data upon which the determination was made.

- c) The petitioner may file a reply within 7 days after the service of any response by the Agency.

## Section 106.608 Hearing

- a) Within 14 days after a petition is filed, the Agency must publish notice of such petition in a newspaper of general circulation in the county in which the source is located. Within 30 days after the filing of the petition, any person may file with the Clerk of the Board a request for hearing on the petition.
- b) The hearing officer will schedule any hearing. The Clerk of the Board must give notice of the hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

## Section 106.610 Burden of Proof

The burden of proof will be on the petitioner to demonstrate that the Agency's determination of culpability is incorrect.

SUBPART G: INVOLUNTARY TERMINATION OF ENVIRONMENTAL  
MANAGEMENT SYSTEM AGREEMENTS (EMSAs)

## Section 106.700 Purpose

The purpose of this Subpart is to set forth the criteria and procedures under which the Board or the Agency may terminate an EMSA, as defined in 35 Ill. Adm. Code 101.202.

## Section 106.702 Applicability

- a) When the Agency terminates an EMSA under Section 52.3 4(b) of the Act, only Section 106.704 of this Subpart applies.
- b) This Subpart, except for Section 106.704, applies to proceedings in which the Board will determine whether to terminate an EMSA.

## Section 106.704 Termination Under Section 52.3-4(b) of the Act

- a) To terminate an EMSA under Section 52.3-4(b) of the Act, the Agency must determine that the sponsor's performance under the EMSA has failed to:
  - 1) *Achieve emissions reductions or reductions in discharges of wastes beyond the otherwise applicable statutory and regulatory*



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*requirements through pollution prevention or other suitable means; or*

2) *Achieve real environmental risk reduction or foster environmental compliance by other persons regulated under this Act in a manner that is clearly superior to the existing regulatory system.* [415 ICS 5/52.3-1(b)]

b) If the Agency terminates an EMSA under Section 52.3-4(b) of the Act, the sponsor may file an appeal with the Board. Appeals to the Board will be pursuant to 35 Ill. Adm. Code 105 Subparts A and B.

**Section 106.706 Who May Initiate, Parties**

- a) Only the Agency may commence a proceeding to terminate an EMSA under this Subpart.
- b) The Agency must be designated the complainant. The sponsor must be designated the respondent.
- c) Misnomer of a party is not a ground for a dismissal; the name of any party may be corrected at any time.

**Section 106.707 Notice, Statement of Deficiency, Answer**

a) A proceeding to terminate an EMSA will be commenced when the Agency serves a notice of filing and a statement of deficiency upon the respondent and files 1 original plus 9 copies of the notice of filing and statement of deficiency with the Clerk.

b) The statement of deficiency must contain:

- 1) The stated basis for the respondent's alleged deficient performance under Section 106.612(a) of this Subpart;
- 2) The dates, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate the EMSA; and
- 3) The dates, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate the EMSA; and
- 4) With respect to subsections (b)(1) through (b)(3) of this Section, the statement of deficiency must contain sufficient detail to advise the respondent of the extent and nature of the alleged violations to reasonably allow the respondent to prepare a defense.

c) The respondent must file an answer within 15 days after receipt of the statement of deficiency, unless the Board or the hearing officer extends the 15-day period for good cause. All material allegations of the statement of deficiency will be taken as admitted if not specifically denied by the answer, or if no answer is filed. Any

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facts that constitute an affirmative defense that would be likely to surprise the complainant must be plainly set forth in the answer before hearing.

**Section 106.708 Service**

a) The Agency must serve a copy of the notice of filing and statement of deficiency either personally on the respondent or the respondent's authorized agent, or by registered or certified mail with return receipt signed by the respondent or the respondent's authorized agent. Proof must be made by affidavit of the person who makes personal service, or by properly executed registered or certified mail receipt. The Agency must file proof of service of the notice of filing and statement of deficiency with the Clerk immediately upon completion of service.

b) The Agency and the respondent must serve all motions and all other notices personally, by First Class United States mail, with sufficient postage, or by overnight delivery by a nationally recognized courier service. The Agency and the respondent must file an original and 9 copies of the motions and notices with the Clerk with proof of service.

c) Service is presumed complete upon personal service, four days after deposit in the United States First Class mail, with sufficient postage, or the next business day upon deposit with a nationally recognized courier service for overnight delivery.

**Section 106.710 Notice of Hearing**

a) The Clerk will assign a docket number to each statement of deficiency filed. Any hearing will be held not later than 60 days after the respondent files the answer, subject to any extensions ordered under subsection (c) of this Section.

b) The Chairman of the Board will designate a hearing officer and the Clerk will notify the parties of the designation. The hearing officer may be a Member of the Board if otherwise qualified.

c) The hearing officer, after reasonable efforts to consult with the parties, will set a time and place for hearing. The Board or the hearing officer may extend the time for hearing if all parties agree or there are extreme and unanticipated or uncontrollable circumstances that warrant a delay. The Board or the hearing officer may delay the hearing more than once. In each event, the Board or the hearing officer will not delay the hearing for more than 30 days.

d) The hearing will be held in the county in which the pilot project is located, or in another county that the hearing officer designates for cause.

e) The hearing officer or the Clerk will give notice of the hearing, at

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least 30 days before the hearing, to the parties under Section 106.708(b) of this Subpart, and to the public by public advertisement in a newspaper of general circulation in the county in which the pilot project is located.

f) The Agency must give notice of each statement of deficiency and hearing under Section 106.708(b) of this Part at least 10 days before the hearing to:

- 1) All stakeholders named or listed in the EMSA; and
- 2) Any person who submitted written comments on the respondent's EMSA or participated in the public hearing on the respondent's EMSA by signing an attendance sheet or signature card under the procedures set forth in 35 Ill. Adm. Code 187.404, if less than 100 persons attended the public hearing on the respondent's EMSA as indicated by signatures on the attendance sheet or signature cards.

g) Failure to comply with this Section is not a defense to an involuntary termination proceeding under this Subpart, but the hearing officer may postpone the hearing upon the motion of any person prejudiced by a failure to comply with this Section.

**Section 106.712 Deficient Performance**

a) For purposes of this Subpart, a respondent's performance under its EMSA is deficient if the Agency asserts and the Board finds that any of the following conditions exist:

- 1) The respondent misrepresented the factual basis for entering into the EMSA.
- 2) The respondent failed to provide access to the pilot project for the Agency to monitor compliance with an EMSA.
- 3) The respondent falsified any monitoring data, recordkeeping information or reports regarding the pilot project.
- 4) The respondent or the owner or operator of the pilot project failed to comply with any requirement of any federal or local environmental law or regulation that applies to the pilot project and that the EMSA does not address, and for which a citizen's complaint has been filed with a court of competent jurisdiction or the appropriate authority has sent a notice of violation, complaint or other notice of failure to comply to the respondent, or the owner or operator of the pilot project.
- 5) The respondent or the owner or operator of the pilot project failed to comply with any requirement of any State environmental law or regulation that applies to the pilot project and that the EMSA does not address, and for which a citizen's complaint has been filed with the Board or the Agency has mailed a notice of violation to the respondent or the owner or operator of the pilot project under Section 31(a) or (b) of the Act.

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- 6) The respondent failed to comply with its EMSA, subject to any grace or cure periods or rights contained in the EMSA.
- b) Any Board finding of deficient performance under subsection (a)(4) or (a)(5) of this Section will not be binding for any purpose or in any other proceeding under the Act, other than under this Subpart.

**Section 106.714 Board Decision**

a) The Board will prepare a written opinion and order for all final determinations that will include findings of fact (with specific page references to principal supporting items of evidence in the record) and conclusions of law (supported by adequate reasoning) on all material issues.

b) The Board will render its decision as expeditiously as practicable. The Board will render a decision as an order that:

- 1) Terminates the EMSA;
  - 2) Defers termination for a specified time, not to exceed 90 days from the date of the order, during which the respondent may rectify the deficient performance; or
  - 3) Rejects termination of the EMSA.
- c) The Board may extend the time period under subsection (b)(2) of this Section for good cause.

d) The Board may order any or all of the following:

- 1) Direct the respondent to cease and desist from violating the Act, the Board's regulations, or the EMSA;
  - 2) Require the respondent to provide performance assurance compensation in appropriate amounts;
  - 3) Require the respondent to post a sufficient performance bond or other security to assure that the respondent corrects the violation within the time that the Board prescribes;
  - 4) Enforce any remedy provision of the EMSA; and
  - 5) Order other relief as appropriate.
- e) The Clerk will publish the order and opinion with the vote of each Board Member recorded and will notify the parties required to be notified of the hearing from which the order arose of the order and opinion.

**Section 106.716 Burden of Proof**

The Agency has the burden to prove, by a preponderance of the evidence, that there has been deficient performance under the EMSA, as set forth in Section 106.712(a) of this Subpart.

**Section 106.718 Motions, Responses**

- a) All motions before a hearing must be presented to the hearing officer

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- at least 10 days before the date of the hearing.
- b) The complainant's motion to voluntarily dismiss an action as to any or all claims must be directed to the Board and may be made orally upon the hearing record, or may be made in writing at any time before the Board issues its decision.
  - c) All motions must be served on all parties, including the Agency and its representative and the hearing officer, with proof of service.
  - d) Unless made orally on the record during a hearing or unless the hearing officer directs otherwise, a motion must be in writing, must state the reasons for and grounds upon which the motion is made, and may be accompanied by any affidavits or other evidence relied on and, when appropriate, by a proposed order.
  - e) Within 7 days after a written motion is served, or another period that the Board or hearing officer may prescribe, a party may file a response to the motion, accompanied by affidavits or other evidence. If no response is filed, the parties will be deemed to have waived objection to the motion, but the waiver of objection does not bind the Board. The moving party does not have the right to reply, except as the hearing officer or the Board permits.
  - f) No oral argument will be heard on a motion before the Board unless the Board directs otherwise. A written brief may be filed with a motion or an answer to a motion.
  - g) The hearing officer may rule upon all motions, except that the hearing officer has no authority to dismiss, or rule upon a motion to dismiss or decide a proceeding on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike any claim or defense for insufficiency or want of proof.
  - h) No interlocutory appeal of a motion may be taken to the Board from a ruling of the hearing officer.
  - i) After the hearing, the Board may review the hearing officer's rulings. The Board will set aside the hearing officer's ruling only to avoid material prejudice to the rights of a party. The hearing officer, if a member of the Board, may vote upon motions to review his or her rulings as hearing officer.
  - j) Unless the Board orders or this Subpart provides otherwise, the filing of a motion will not stay the proceeding or extend the time to perform any act.

## Section 106.720 Intervention

- a) Upon timely written motion and subject to the need to conduct an orderly and expeditious hearing, the Board will permit a person to intervene in an involuntary termination proceeding under this Subpart if the person submitted written comments on the respondent's EMSA or participated in the public hearing on the respondent's EMSA by signing an attendance sheet or signature card at hearing under the procedures

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- set forth in 35 Ill. Adm. Code 187.404, or is named or listed in the respondent's EMSA as a stakeholder, and if the Board's final order may adversely affect the person.
- b) The movant must file an original and 9 copies of a motion to intervene with the Board and serve a copy on each party not later than 48 hours before the hearing. The Board may permit a person to intervene at any time before the beginning of the hearing when that person shows good cause for the delay.
  - c) An intervenor has all the rights of an original party, except that the Board may limit the rights of the intervenor in accordance with 35 Ill. Adm. Code 101.402.

## Section 106.722 Continuances

The hearing officer will grant a motion to continue an involuntary termination proceeding under this Subpart when Justice requires. All motions to continue must be supported by an affidavit or written motion before the hearing officer by the person or persons with knowledge of the facts that support the motion. However, if the Board determines that any involuntary termination proceeding under this Subpart is not proceeding expeditiously, the Board may order actions that it deems appropriate to expedite the proceeding.

## Section 106.724 Discovery, Admissions

- a) Discovery, except requests to produce documents, admit facts and state the identity and location of persons with knowledge of facts, as set forth in subsection (b) of this Section, is not permitted unless the hearing officer orders otherwise.
- b) Regarding any matter not privileged, the hearing officer may order a party to produce documents and to state the identity and location of persons with knowledge of facts upon the written request of any party when parties cannot agree on the legitimate scope of the requests. It is not a ground for objection that the documents will be inadmissible at hearing if the information sought appears reasonably relevant to the lead to the discovery of admissible evidence or is relevant to the subject matter involved in the pending proceeding.
- c) The hearing officer may order a party:
  - 1) To state the identity and location of persons with knowledge of relevant facts.
  - 2) To produce evidence that a party controls or possesses so that it may be inspected, copied or duplicated. The order may grant the right to reasonably inspect the pilot project.
  - d) The hearing officer may at any time on his or her own initiative, or on motion of any party or witness, make a protective order as justice requires. The protective order may deny, limit, condition or regulate discovery to prevent unreasonable delay, expense, harassment, or

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oppression, or to protect non-disclosable materials from disclosure consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.

- e) All objections to rulings of the hearing officer must be made in the record.
- f) Sections 106.718(d), (e), (f), (g), (h), (i) and (j) of this Subpart apply regarding procedures to rule on objections.
- g) Failure to comply with any ruling will subject the person to sanctions under 35 Ill. Adm. Code 101, Subpart H.
- h) A party may serve on any other party, no sooner than 15 days after the Agency files the statement of deficiency, a written request that the latter admit the truth of any specified relevant fact set forth in the request.
- i) A party may serve on any other party, no sooner than 15 days after the Agency files the statement of deficiency, a written request to admit to the genuineness of any relevant documents described in the request. Copies of the document must be served with the request unless copies have already been furnished.
- j) Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 15 days after service under subsection (h) or (i) of this Section, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement that denies specifically the matters on which the admission is requested or that sets forth in detail the reasons why the party cannot truthfully admit or deny those matters or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If a party objects in writing to a part of the request, the remainder of the request must be answered within the period designated in the request. A denial must fairly meet the substance of the requested admission. If good faith requires that a party deny only a part, or requires qualification, of a matter of which an admission is requested, the party must specify so much of it as is true and deny only the remainder. The hearing officer will hear any objection to a request or to an answer upon prompt notice and motion of the party making the request.
- k) Any admission made under this Section is for the purpose of the pending proceeding only. It does not constitute an admission by the party for any other purpose and may not be used against the party in any other proceeding.
- l) If a party, after being served with a request to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial in response to the request, and if the party requesting the admissions later proves the genuineness of the document or the truth of the matter of fact, the latter party may apply to the Board for an order under 35 Ill. Adm. Code 101.Subpart H for payment of reasonable

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expenses incurred.

## Section 106.726 Subpoenas

- a) Upon any party's timely motion to the Board, or on motion of the hearing officer or the Board, the hearing officer or the Board may issue a subpoena to attend a hearing. The subpoena may include a command to produce evidence reasonably necessary to resolve the matter under consideration, subject to this Subpart's limitations on discovery. A copy of the subpoena must be served upon the Clerk. If the witness, other than a respondent or owner or operator of a pilot project, is a non-resident of the State, the order may provide terms and conditions regarding his or her appearance at the hearing that are just, including payment of his or her reasonable expenses.
- b) Every subpoena must state the title of the proceeding and command each person to whom it is directed to attend and give testimony at the time and place specified.
- c) The hearing officer or the Board, upon motion made promptly and in any event at or before the time specified for compliance with the subpoena, may quash or modify the subpoena if it is unreasonable and oppressive.
- d) Failure of any witness to comply with a Board subpoena will subject the witness to sanctions under 35 Ill. Adm. Code 101.Subpart H.

## Section 106.728 Settlement Procedure

- a) All parties to any proceeding in which a settlement or compromise is proposed must file with the Clerk before the time of the scheduled hearing a written statement, signed by the parties or their authorized representatives, that outlines the nature of, the reasons for, and the purpose to be accomplished by, the settlement. The statement must contain:
  - 1) A full stipulation of all material facts that pertain to the nature, extent and causes of the alleged violations;
  - 2) The nature of the relevant parties' operations and control equipment;
  - 3) Any explanation for past failures to comply and an assessment of the impact on the public from the failure to comply;
  - 4) Details about future plans for compliance, including a description of additional control measures and the dates on which they will be implemented; and
  - 5) The proposed performance assurance payment, if any.
- b) If an agreed settlement is filed under this Section, the Board may dismiss the proceeding without holding a hearing.

## Section 106.730 Authority of Hearing Officer, Board Members, and Board

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**Assistants**

- a) The hearing officer has the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear and complete record. The hearing officer has all powers necessary to these ends including the authority to:
  - 1) Issue discovery orders;
  - 2) Rule upon objections to discovery orders;
  - 3) Make protective orders as justice requires, which may deny, limit condition or regulate discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect materials from disclosure by the party who obtains the materials;
  - 4) Administer oaths and affirmations;
  - 5) Rule upon offers of proof, receive evidence and rule upon objections to introducing evidence, subject to Section 106.732(b) of this Subpart;
  - 6) Regulate the course of the hearings and the conduct of the parties and their counsel;
  - 7) Examine witnesses solely to clarify the record of the hearing. When any party is not represented by counsel, the hearing officer may examine and cross-examine any witness to insure a clear and complete record. However, the hearing officer may not exclude exhibits or other testimony because of the examination unless all parties agree; and
  - 8) Except as otherwise provided, consider and rule as justice may require upon motions appropriate to an adjudicative proceeding.
- b) Any Board Member or assistant to a Board Member present at the hearing may advise the hearing officer and may interrogate witnesses but does not have the authority to rule on objections or motions or to overrule the hearing officer during the hearing.

**Section 106.732 Order and Conduct of Hearing**

- a) The following will be the order of all involuntary termination hearings under this Subpart, unless modified by the hearing officer for good cause:
  - 1) Present, argue and dispose of preliminary motions on the matters that the statement of deficiency raises;
  - 2) Present opening statements;
  - 3) Complainant's case in chief;
  - 4) Respondent's case in chief;
  - 5) Complainant's case in rebuttal;
  - 6) Statements from interested citizens, as the hearing officer authorizes;
  - 7) Complainant's opening argument, which may include legal argument;
  - 8) Respondent's closing argument, which may include legal argument;

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- 9) Complainant's closing argument, which may include legal argument;
  - 10) Present and argue all motions before submitting the transcript to the Board; and
  - 11) A schedule to submit briefs to the Board.
- b) All hearings under this Subpart will be public, and any person not a party and not otherwise a witness for a party may submit written statements relevant to the subject matter of the hearing. Any party may cross-examine any person who submits a statement. If the person is not available to be cross-examined upon timely request, the written statement may be stricken from the record. The hearing officer will permit any person to offer reasonable oral testimony whether or not a party to the proceedings.
  - c) All witnesses will be sworn.
  - d) At the conclusion of the hearing, the hearing officer will make a statement about the credibility of witnesses. This statement will be based upon the hearing officer's legal judgment and experience and will indicate whether he or she finds credibility to be at issue in the proceeding and if so, the reasons why. This statement will become a part of the official record and will be transmitted by the hearing officer to each of the parties. No other statement will be made or be appropriate unless the Board orders otherwise.

**Section 106.734 Evidentiary Matters**

The provisions of 35 Ill. Adm. Code 101 regarding admissible evidence, written narrative testimony, official notice, viewing premises, admitting business records, examining adverse parties or agents and hostile witnesses and compelling them to appear at hearing, and amendment and variance of pleadings and proof will apply to proceedings under this Subpart.

**Section 106.736 Post-Hearing Procedures**

The provisions of 35 Ill. Adm. Code 101 regarding default, transcripts, the record, briefs and oral arguments will apply to proceedings under this Subpart.

**Section 106.738 Motion After Entry of Final Order**

Within 35 days after the Board adopts a final order, any party may file a motion to rehear, modify or vacate the order or for other relief. Response to the motion must be filed within 14 days after the motion is filed. A motion filed within 35 days stays enforcement of the final order.

**Section 106.740 Relief from Final Orders**

- a) The Board may at any time correct errors in orders or other parts of the record that arise from oversight or omission or clerical mistakes.

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The Board may do so on its own initiative or on the motion of any party and after notice, if any, as the Board orders. During the pendency of an appeal, the Board may correct the mistakes before the appeal is docketed in the appellate court. While the appeal is pending, the Board may correct the mistakes with leave of the appellate court.

b) On motion and upon terms that are just, the Board may relieve a party or a party's legal representative from a final order, for the following:

- 1) Newly discovered evidence that by due diligence could not have been discovered in time under Section 106.714 of this Subpart;
- 2) Fraud (whether previously denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
- 3) Void order.

c) A motion under this Section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the Board entered the order but the motion is not a continuation of the proceeding. The motion must be supported by affidavit or other appropriate showing as to matters not of record. All parties must be notified under Section 106.708(b) of this Subpart.

d) This motion must be filed with the Board within 60 days after entry of the order.

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1) Heading of the Part: Identification and Protection of Trade Secrets

2) Code citation: 35 Ill. Adm. Code 120

3) Section Numbers: Proposed Action:

120.101	Repeal
120.102	Repeal
120.103	Repeal
120.201	Repeal
120.202	Repeal
120.203	Repeal
120.210	Repeal
120.215	Repeal
120.220	Repeal
120.225	Repeal
120.230	Repeal
120.240	Repeal
120.245	Repeal
120.250	Repeal
120.260	Repeal
120.265	Repeal
120.270	Repeal
120.301	Repeal
120.305	Repeal
120.310	Repeal
120.315	Repeal
120.320	Repeal
120.325	Repeal
120.330	Repeal
120.340	Repeal
120.350	Repeal
120.360	Repeal
120.401	Repeal
APPENDIX A	Repeal

4) Statutory authority: Implementing and authorized by Sections 7 and 7.1 of the Environmental Protection Act. [415 ILCS 5/7 and 7.1]

5) A complete description of the subjects and issues involved: The Board's rulemaking docket 800-20 proposes to repeal all of the Board's existing procedural rules and adopt new procedural rules at Parts 101-108, Part 125 and Part 130.

6) Will these proposed rules replace emergency rules currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No



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- 8) Do these proposed rules contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of statewide policy objectives: While this proposed repealer does not impose a State mandate, the proposed new regulations impose procedural mandates on units of local government to the extent they may appear before the Board.
- 11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:
- Clerk's Office  
Illinois Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601

Request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620 or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

12) Initial regulatory flexibility analysis:

- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

13) Regulatory agenda on which this rulemaking was summarized: January 2000

The full text of the proposed repealer begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD  
  
PART 120  
IDENTIFICATION AND PROTECTION OF TRADE SECRETS (REPEALED)  
  
SUBPART A: GENERAL PROVISIONS

Section	
120.101	Purpose
120.102	Superseding Requirements
120.103	Definitions

SUBPART B: PROCEDURES FOR IDENTIFYING ARTICLES  
WHICH REPRESENT TRADE SECRETS

Section	
120.201	Claim That Article Represents A Trade Secret
120.202	Contents of Statement of Justification
120.203	Optional Limited Waiver of Statutory Deadlines
120.210	Public Request for Disclosure of An Article Which Is Claimed to Represent a Trade Secret
120.215	Agency Request for Justification of Claim
120.220	Time Limit For Delayed Submission of Justification
120.225	Time Limit For Agency Determination
120.230	Standards For Agency Determination
120.240	Agency Actions Following a Negative Determination
120.245	Agency Actions Following a Positive Determination
120.250	Review of Agency Determination
120.260	Status of Article Claimed or Determined to Represent a Trade Secret
120.265	Status of Article Which Was Determined or Claimed to Represent a Trade Secret Prior to the Effective Date of This Part
120.270	Extension of Deadlines for Participation in Proceedings

SUBPART C: PROCEDURES FOR PROTECTING ARTICLES  
WHICH REPRESENT TRADE SECRETS

Section	
120.301	Applicability
120.305	Owner's Responsibility to Mark Article
120.310	Agency's Responsibility to Mark Article
120.315	Transmission of Article Between Agencies
120.320	Segregation of Article
120.325	Public Access to Information Related to Article
120.330	Access to Claimed or Determined Article

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- 120.340 Unauthorized Disclosure or Use of Article  
 120.350 Limitation on Copying Article  
 120.360 Disposal of Articles

## SUBPART D: INTERNAL AGENCY PROCEDURES

- Section  
 120.401 Additional Procedures

## APPENDIX A Flow Chart for Identification of Trade Secrets

**AUTHORITY:** Implementing and authorized by Sections 7 and 7.1 of the Environmental Protection Act (Ill. Rev. Stat. 1979, ch. 111 1/2, pars. 1007 and 1007.1).

**SOURCE:** Adopted at 7 Ill. Reg. 16149, effective November 23, 1983; Part repealed in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective 1007.1).

## SUBPART A: GENERAL PROVISIONS

## Section 120.101 Purpose

This Part establishes uniform procedures for the identification and protection of articles which represent trade secrets and which are reported to or otherwise obtained by the Illinois Environmental Protection Agency, the Illinois Pollution Control Board (Board), or the Illinois Department of Energy and Natural Resources (Department).

## Section 120.102 Superseding Requirements

Regulations adopted by the Board for particular programs or orders of the Board in particular proceedings shall supersede any conflicting requirements in this Part. Statutory requirements for disclosure and non-disclosure contained in Section 7 of the Act also supersede any conflicting requirements in this Part and should be referenced prior to undertaking any of the procedures contained in this Part.

## Section 120.103 Definitions

- a) Except as otherwise defined in subsection (b), definitions of terms used in this Part shall be those used in the Environmental Protection Act (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 1001 et seq.) and in 35 Ill. Adm. Code 101.
- b) The following definitions shall apply to this Part only:

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**"Act"** means the Environmental Protection Act (Sections 1-52 and all amendments thereto (Ill. Rev. Stat. 1981, ch. 111 1/2, pars. 1001-1052 as amended).

**"Agency"** means any of the following:

The Illinois Pollution Control Board; or  
 The Illinois Environmental Protection Agency; or  
 The Illinois Department of Energy and Natural Resources.

**"Article"** means any object, material, device or substance or whole or partial copy thereof, including any writing, record, document, recording, drawing, sample, specimen, prototype, model, photograph, culture, microorganism, blueprint or map.

**"Authorized Representative"** means any person who is authorized to act on behalf of an agency by formal agreement or contract.

**"Copy"** means any facsimile, replica, photograph, or other reproduction of an article, and any note, drawing or sketch made of or from an article.

**"Owner"** means any person who owns an article reported to or obtained by an agency or any agent of such person.

**"Proceeding"** means any rulemaking, adjudication, variance proceeding, certification, or permitting conducted by an agency under the Act or regulations promulgated thereunder.

**"Representing"** means describing, depicting, containing, constituting, reflecting or recording.

**"Requester"** means any person who makes a request to an agency to review an article.

**"Trade Secret"** means the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

## SUBPART B: PROCEDURES FOR IDENTIFYING ARTICLES

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## WHICH REPRESENT TRADE SECRETS

**Section 120.201 Claim That Article Represents A Trade Secret**

a) An agency shall consider any article submitted to or otherwise obtained by the agency as claimed to represent a trade secret and shall protect such article from disclosure pursuant to Subpart C of this Part, only if the agency is provided with the following:

- 1) A claim letter which clearly states that the article is claimed to represent a trade secret, as defined in these rules and the Act, and names and briefly describes the article; and
  - 2) A copy of the article marked as provided in Section 120.305; and
  - 3) Either a Statement of Justification for the claim meeting the requirements of Sections 120.202 or a limited waiver of the statutory deadlines for any agency decision as provided in Section 120.203.
- b) The owner of an article in the possession of the agency may claim that the article represents a trade secret by providing the agency with the information listed in subsection (a) at any time.

**Section 120.202 Contents of Statement of Justification**

A statement of justification shall contain the following:

- a) A detailed description of the procedures used by the owner to safeguard the article from becoming available to persons other than those selected by the owner to have access thereto for limited purposes; and
- b) A detailed statement identifying the persons or class of persons to whom the article has been disclosed; and
- c) A certification that the owner has no knowledge that the article has ever been published, disseminated or otherwise become a matter of general public knowledge; and
- d) A detailed discussion of why the owner believes the article to be of competitive value; and
- e) Any other pertinent information which will support the claim.

**Section 120.203 Optional Limited Waiver of Statutory Deadlines**

In lieu of submitting a Statement of Justification at the time a claim is made, the owner of an article claimed to represent a trade secret may submit a written waiver of any statutory deadlines for agency decisions which may be delayed due to a subsequent justification and determination process. Such waiver shall extend the deadline for decision for a period equal to the period by which the decision is delayed due to the subsequent justification and determination process plus 10 working days.

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**Section 120.210 Public Request for Disclosure of An Article Which Is Claimed to Represent a Trade Secret**

a) Any person may make a request for the disclosure of information which has been claimed to represent a trade secret pursuant to Section 120.201 by submitting to the agency a written request.

b) Upon receipt of a written request for the disclosure of an article which is claimed to represent a trade secret, but for which a statement of justification has not been submitted, the agency shall send written notification of the request, return receipt requested, to the owner of the article as identified in the claim letter submitted pursuant to Section 120.201(a)(1). At a minimum, this notification shall contain the following:

- 1) A copy or description of the written request; and
- 2) A list of the standards to be used in the agency's determination and the information required to be supplied in a statement of justification; and
- 3) A notice of the time limit prescribed by Section 120.220 for the return of a complete statement of justification to the agency, including notice of the availability of an extension of that time period.

**Section 120.215 Agency Request for Justification of Claim**

An employee or officer of the agency who is authorized to make determinations pursuant to Section 120.330(a) may request that the owner of an article claimed to represent a trade secret submit a justification meeting the requirements of Section 120.202. Such request may be made when the article is submitted or obtained, or at any time thereafter. The request shall be in written form, shall be signed by the authorized employee, and shall state the circumstances warranting the request. Circumstances in which such a request may be warranted include, but are not limited to, the following:

- a) Reasonable anticipation of requests from the public for disclosure of the article; or
- b) Facilitation of public participation in proceedings before the agency where notice and/or comment periods are short relative to the time required for a final determination in accordance with the requirements of this Part; or
- c) There is reasonable doubt that the article represents a trade secret and there has been a practice, on the part of the owner of the article, of indiscriminately claiming that articles submitted to the agency represent trade secrets; or
- d) The requirement in a specific regulation that a determination of whether the article represents a trade secret be made at the time that it is submitted to or obtained by the agency.

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**Section 120.220 Time Limit For Delayed Submission of Justification**

Within 10 working days from the date receipt of the notification required by Section 120.210(b) or a written request made pursuant to Section 120.215, the owner shall submit a statement of justification as prescribed in Section 120.202 to the agency. This time period may be extended by the agency for a second period of 10 working days if, within the first 10 day period, the owner demonstrates that the extension is necessary to complete the statement of justification and submits a request for an extension.

**Section 120.225 Time Limit for Agency Determination**

The agency shall determine whether the article represents a trade secret within 10 working days from the date of receipt of a complete statement of justification as prescribed in Section 120.202 (whether such justification is submitted as a result of a request by the agency, a request by the public, or on the owner's initiative.) This time period may be extended for a second period of 10 working days, if within the first 10 day period, the agency demonstrates that the extension is necessary to make the determination pursuant to Section 120.230 and notifies the owner and requester of the extension.

**Section 120.230 Standards for Agency Determination**

- a) An article shall be determined to represent a trade secret if and only if:
  - 1) The owner has substantially complied with the procedures for making a claim and justification as prescribed by this Part; and
  - 2) The statement of justification demonstrates that:
    - A) The article has not been published, disseminated or otherwise become a matter of general public knowledge; and
    - B) The article has competitive value.
- b) There shall be a rebuttable presumption that an article has not been published, disseminated or otherwise become a matter of general public knowledge, if:
  - 1) The owner has taken reasonable measures to prevent the article from becoming available to persons other than those selected by the owner to have access thereto for limited purposes; and
  - 2) The statement of justification contains a certification that the owner has no knowledge that the article has ever been published, disseminated, or otherwise become a matter of general public knowledge.
- c) The agency may determine that any page, part or portion of the article represents a trade secret which meets the requirements of subsection (b).

**Section 120.240 Agency Actions Following a Negative Determination**

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- a) If the agency determines that an article, or any page, part or portion thereof, does not meet the standards specified in Section 120.230(a)(1) or (2), the agency shall deny the claim for trade secret protection for the article or page, part or portion thereof, and shall give written notice of such denial to the owner of the article and the requester pursuant to subsection (b) of this section.
- b) Written notice of the denial of a claim for trade secret protection shall be given by certified mail, return receipt requested, and shall contain the following information:
  - 1) A statement of the agency's reason for denying the claim; and
  - 2) A notification of the availability of review of the agency decision pursuant to the procedures prescribed in Section 120.250; and
- 3) A notification that the agency will cease protecting the article, or the page, part or portion thereof, as a trade secret unless the agency is served with notice of the filing of a petition for review within 35 days from the date of notice to the owner.
- c) If the agency is served with notice of the filing of a petition for review of its determination within 35 days of the notice of denial to the owner, the agency shall notify the requester of such action and shall continue to protect the article, or the page, part or portion thereof, pursuant to Subpart C until such time as it receives official notifications of a final order by a reviewing body with proper jurisdiction which does not reverse the agency determination and which is not subject to further appeal.
- d) If the agency does not receive the notification of a petition for review within 35 days or does receive official notification of a final, non-appealable action which does not reverse the agency determination, the article shall not be protected pursuant to Subpart C and the agency shall so notify both the owner and the requester.

**Section 120.245 Agency Actions Following a Positive Determination**

- a) If the agency determines that an article, or any page, part or portion thereof, meets the standards specified in Section 120.230(a)(1) and (2), the agency shall grant the claim for trade secret protection for the article or page, part, or portion thereof, and shall give written notice of such granting to the owner of the article and the requester pursuant to subsection (b) of this section.
- b) Written notice of the granting of a claim for trade secret protection shall be given by certified mail, return receipt requested, and shall contain the following information:
  - 1) A statement of the agency's reasons for granting the claim; and
  - 2) A notification of the availability of review of the agency's determination pursuant to the procedures prescribed in Section 120.250; and

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- 3) A notification that the article, or the page, part or portion thereof, will be protected pursuant to Subpart C until such time as the agency receives official notification of a final order by a reviewing body which reverses the agency determination and which is not subject to further appeal.
- c) The agency shall continue to protect an article, or the page, part or portion thereof, for which trade secret protection has been granted pursuant to Subpart C until such time as it receives official notification of a final order by a reviewing body with proper jurisdiction which reverses the agency determination and which is not subject to further appeal.

## Section 120.250 Review of Agency Determination

- a) Except as provided in (b), an owner or requester who is adversely affected by a final determination of either the Environmental Protection Agency or the Department of Energy and Natural Resources pursuant to this Part, may petition the Board for review within 35 days after entry of a final agency determination.
- b) An owner or requester who is adversely affected by a final determination of the Board pursuant to this Part, may obtain judicial review by filing a petition for review pursuant to Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 1041.)
- c) The failure of an agency to make a final determination within the time limits prescribed in this part may be deemed to be a final determination for purposes of appeal.

## Section 120.260 Status of Article Claimed or Determined to Represent a Trade Secret

- a) A claim or determination by one agency that an article represents a trade secret made pursuant to this Part shall apply to that same article when in the possession of either of the other two agencies.
- b) Notwithstanding subsection (a), any person may make a written request that an agency having possession of the article review a determination made pursuant to this Part.
- c) The agency shall review a determination made pursuant to this Part if and only if the person making the request for review presents prima facie evidence of a change in factual circumstances which would require the reversal of the agency's Section 120.230 determination. The review of a prior determination shall utilize the same procedures utilized in making the prior determination.

## Section 120.265 Status of Article Which Was Determined or Claimed to Represent a Trade Secret Prior to the Effective Date of This Part

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- a) Any article which was determined by an agency prior to the effective date of this Part to represent a trade secret in accordance with agency procedures adopted pursuant to the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, pars. 1001 et seq.) shall be deemed to have been determined to represent a trade secret for the purposes of this Part.
- b) Any article which was claimed to represent a trade secret prior to the effective date of this Part, but which was not determined by an agency to represent a trade secret in accordance with agency procedures adopted pursuant to the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, pars. 1001 et seq.) shall be deemed to have been claimed to represent a trade secret for the purposes of this Part for 60 days after the effective date of this Part.

## Section 120.270 Extension of Deadlines for Participation in Proceedings

Upon a finding by the agency that any person will be adversely affected in a proceeding before that agency due to the timing of the determination of the trade secret status of an article, the agency shall extend any deadline for such person's participation in that proceeding until 10 days after the status of the article has been determined by the agency. The burden shall be on the person to demonstrate the relevancy of the article to the proceeding; that the person will be adversely affected in the proceeding due to the timing of the trade secret determination, and that the person could not have avoided the resulting delay by making an earlier request.

## SUBPART C: PROCEDURES FOR PROTECTING ARTICLES WHICH REPRESENT TRADE SECRETS

## Section 120.301 Applicability

Any article which is claimed or determined to represent a trade secret pursuant to Subpart B shall be protected from unauthorized disclosure pursuant to this Subpart.

## Section 120.305 Owner's Responsibility to Mark Article

- a) Where an entire article is claimed to represent a trade secret, the owner shall mark the article with the words "Trade Secret" in red ink on the face or front of the article.
- b) Where less than an entire article is claimed to represent a trade secret, the owner shall:
  - 1) Mark the article with the words "Trade Secret" in red ink on the face or front of the article;
  - 2) Indicate on the face or front of the article which page, part or portion of the article is claimed to represent a trade secret;

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- 3) Mark every page, part or portion of the article which is claimed to represent a trade secret with the words "Trade Secret;" and
- 4) Furnish the agency with a second copy of the article which is marked pursuant to paragraphs (1) and (2) of this subsection and from which the page, part or portion of the article which is claimed to represent a trade secret is deleted.

**Section 120.310 Agency's Responsibility to Mark Article**

- a) Where an entire article is determined to represent a trade secret pursuant to Section 120.230, the agency shall mark the article with the word "Determined" in red ink on the face or front of the article and shall also mark any claim letter submitted for the article.
- b) Where less than an entire article is determined to represent a trade secret pursuant to Section 120.230, the agency shall:
  - 1) Mark the article with the word "Determined" in red ink on the face or front of the article;
  - 2) Indicate on the face or front of the article and any claim letter submitted for the article which page, part or portion of the article is determined to represent a trade secret; and
  - 3) Mark every page, part or portion of the article which is determined to represent a trade secret with the word "Determined."

**Section 120.315 Transmission of Article Between Agencies**

Prior to transmitting any article which is claimed or determined to represent a trade secret to another agency, the agency shall insure that the article is properly marked pursuant to Sections 120.305 and 120.310 and is clearly distinguished and segregated from other transmitted materials.

**Section 120.320 Segregation of Article**

Any article, or any page, part or portion thereof, which is claimed or determined to be a trade secret shall be kept segregated from articles which are open to public inspection, and shall be kept secure from unauthorized access.

**Section 120.325 Public Access to Information Related to Article**

- a) A copy of the claim letter submitted pursuant to Section 120.201(a)(1) shall be open to public inspection.
- b) Where an article was determined to represent a trade secret prior to the effective date of this Part and no claim letter exists, the agency shall prepare a statement which shall be open to public inspection which names and briefly describes the article.

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- c) Where a page, part or portion of an article is claimed or determined to represent a trade secret, a copy of the article shall be open to public inspection, with the part or portion deleted which is claimed or determined to represent a trade secret or which would lead to disclosure of the trade secret.

**Section 120.330 Access to Claimed or Determined Article**

- a) The agency shall designate the agency employees and/or officers who are authorized to review articles which are claimed to represent trade secrets for the purpose of making requests and determinations pursuant to Sections 120.215 and 120.230.
- b) Access to an article which is claimed or determined to represent a trade secret shall be limited to:
  - 1) Employees or officers designated pursuant to subsection (a); or
  - 2) Other employees, officers, or authorized representatives of the State specifically authorized by the agency to have access to the article for the purpose of carrying out the Act or regulations promulgated thereunder or when relevant to a proceeding under the Act; or
  - 3) Employees, officers, or authorized representatives of the United States who are specifically authorized by the agency to have access to the article for the purpose of carrying out federal environmental statutes or regulations.
- c) The agency shall maintain the following information with regard to an article which is claimed or determined to represent a trade secret:
  - 1) A record of the number of copies held by the agency;
  - 2) A log of the location of all copies; and
  - 3) A log of all persons who review the article or copies thereof.

**Section 120.340 Unauthorized Disclosure or Use of Article**

- a) The agency shall insure that all persons who are authorized to have access to an article which is claimed or determined to represent a trade secret are given notice of the restrictions on disclosure and use of the article contained in this Subpart, and of the sanctions and liabilities prescribed in subsections (d) and (e) for unauthorized disclosure or use of the article.
- b) No agency officer, employee, or authorized representative may disclose, except as authorized by this Subpart, or use for private gain or advantage, any article which is claimed or determined to represent a trade secret.
- c) Each agency officer, employee, or authorized representative shall take reasonable measures to safeguard an article which is claimed or determined to represent a trade secret and to protect against any disclosure which is inconsistent with these rules.

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- d) Each authorized representative of the agency who is furnished with access to an article which is claimed or determined to represent a trade secret pursuant to this Part shall use or disclose that trade secret only as authorized by the contract or agreement under which such person is authorized to represent the agency. Any contract or agreement between the agency and the authorized representative shall state that the trade secret protection requirements of the contract or agreement are expressly for the benefit of the owner of an article which is claimed or determined to be a trade secret pursuant to this Part and that a breach thereof will permit the owner to sue the authorized representatives directly.

## Section 120.350 Limitation on Copying Article

No agency officer, employee, or authorized representative of the State or the United States shall copy an article which is claimed or determined to represent a trade secret pursuant to this Part except where authorized to do so by the agency officer or employee designated to review the article pursuant to Section 120.330(a). All copies shall be recorded and logged in accordance with Section 120.330(c).

## Section 120.360 Disposal of Articles

An agency may dispose of an article which is claimed or determined to represent a trade secret only by shredding, burning, or returning it to the owner.

## SUBPART D: INTERNAL AGENCY PROCEDURES

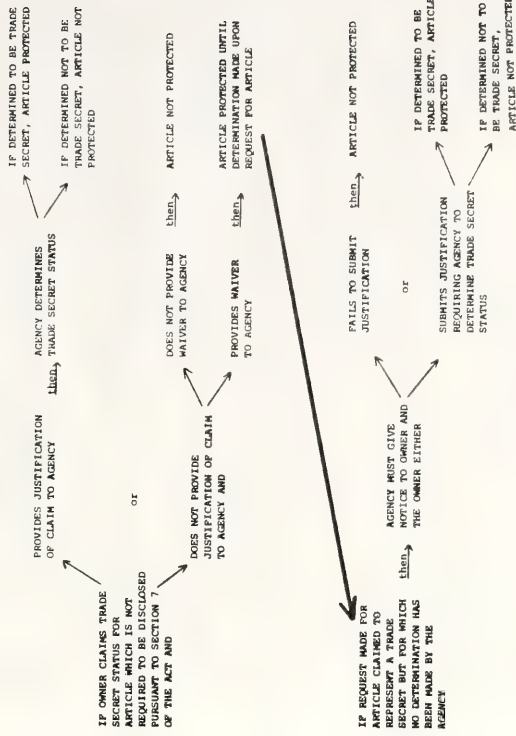
## Section 120.401 Additional Procedures

Each agency may adopt additional procedures which are not inconsistent with this Part for the protection of articles which are claimed or determined to represent a trade secret.

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED REPEALER

## Section 120.401 Appendix A Flow Chart For Identification of Trade Secrets



## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Identification and Protection of Trade Secrets and Other Non-Disclosable Information

- 2) Code citation: 35 Ill. Adm. Code 130

- 3) Section Numbers: Proposed Action:

130.100 New Section  
 130.102 New Section  
 130.104 New Section  
 130.106 New Section  
 130.108 New Section  
 130.110 New Section  
 130.112 New Section  
 130.114 New Section  
 130.116 New Section  
 130.118 New Section  
 130.120 New Section  
 130.122 New Section  
 130.124 New Section  
 130.126 New Section  
 130.128 New Section  
 130.130 New Section  
 130.132 New Section  
 130.134 New Section  
 130.136 New Section  
 130.138 New Section  
 130.140 New Section  
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 130.198 New Section  
 130.200 New Section  
 130.202 New Section  
 130.204 New Section  
 130.206 New Section  
 130.208 New Section  
 130.210 New Section  
 130.212 New Section  
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 130.298 New Section  
 130.300 New Section  
 130.302 New Section  
 130.304 New Section  
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 130.392 New Section  
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 130.396 New Section  
 130.398 New Section  
 130.400 New Section  
 130.402 New Section  
 130.404 New Section  
 130.406 New Section  
 130.408 New Section

- 4) Statutory authority: 415 ICS 5/7, 7.1, 26, and 27 of the Environmental Protection Act [415 ICS 5].

- 5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules, and adopt new procedural rules at Parts 101-108, Part 125 and Part 130. The proposed Part 130 trade secret rules replace those in existing Part 120 adopted in docket R81-30, which we propose to repeal.

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## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

They implement the mandate of Section 7.1 of the Act that we adopt rules for determining which materials are trade secrets or are otherwise nondisclosable or exempt from disclosure requirements of Section 7 of the Act and Section 7 of the FOIA. We have attempted to streamline these rules to avoid any confusion caused by the fact that Subparts A, B and C of the rules apply to three agencies: the Board, the Agency, and DNR.

- 6) Will these proposed rules replace emergency rules currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed rules contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of statewide policy objectives: This rulemaking imposes procedural mandates on units of local government to the extent they may appear before the Board.
- 11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

Clerk's Office  
 Illinois Pollution Control Board  
 100 W. Randolph St., Suite 11-500  
 Chicago, IL 60601  
 Phone: 312/814-6931

Interested persons may request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620 or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

Additionally, the Board will hold two public hearings on these rules. The first hearing will be April 11, 2000 at 1:30 p.m. at:

Illinois Pollution Control Board  
 Hearing Room 403  
 600 S. Second Street  
 Springfield, IL

The second hearing will be May 4, 2000 at 1:30 p.m. at:

James R. Thompson Center  
 Room 9-040

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100 W. Randolph Street  
Chicago, IL

12) Initial regulatory flexibility analysis:

- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking affects those small businesses, small municipalities, and not-for-profit corporations that appear before the Board.
- B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments do not require extensive reporting, bookkeeping or other procedures.
- C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.

13) Regulatory Agenda on which this rulemaking was summarized: January 2000

The full text of the proposed rule begins on the next page:

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER 1: POLLUTION CONTROL BOARD

## PART 130

IDENTIFICATION AND PROTECTION OF TRADE SECRETS AND OTHER  
NON-DISCLOSABLE INFORMATION

## SUBPART A: GENERAL PROVISIONS

Section  
130.100  
130.102  
130.104  
130.106  
130.108  
130.110

General  
Purpose  
Additional Procedures  
Definitions and Severability  
Segregation of Article  
Disposal of Articles

SUBPART B: PROCEDURES FOR IDENTIFYING ARTICLES THAT REPRESENT  
TRADE SECRETS

Section  
130.200  
130.202  
130.204  
130.206  
130.208  
130.210  
130.212  
130.214  
130.216  
130.218  
130.220  
130.222

Initiation of a Claim that an Article is a Trade Secret  
Contents of Statement of Justification  
Waiver of Statutory Deadlines  
Response to the Trade Secret Claim  
Deadline for Agency Trade Secret Determination  
Standards for Agency Determination  
Agency Actions Following a Negative Determination  
Review of Agency Trade Secret Determination  
Effect of a Determination of Trade Secret Status on Other Agencies  
Status of Article Determined or Claimed to be a Trade Secret Before  
the Effective Date of this Part  
Extension of Deadlines to Participate in Proceedings

SUBPART C: PROCEDURES FOR PROTECTING ARTICLES THAT REPRESENT  
TRADE SECRETS

Section  
130.300  
130.302  
130.304  
130.306  
130.308  
130.310

Applicability  
Owner's Responsibility to Mark Article  
Agency's Responsibility to Mark Article  
Transmission of Article Between Agencies  
Public Access to Information Related to Article  
Access to Claimed or Determined Article

## POLLUTION CONTROL BOARD

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- 130.312 Unauthorized Disclosure or Use of Article  
130.314 Limitation on Copying Article

## SUBPART D: NON-DISCLOSABLE INFORMATION OTHER THAN TRADE SECRETS

- Section  
130.400 General  
130.402 Who May View Non-Disclosable Information  
130.404 Application for Non-Disclosure  
130.406 Public Inspection  
130.408 Board Order

**AUTHORITY:** Implementing Sections 7 and 7.1 of the Environmental Protection Act (Act) [415 ILCS 5/7 and 7.1] and authorized by Sections 7, 7.1, 26, and 27 of the Act [415 ILCS 5/7, 7.1, 26, 27].

**SOURCE:** Subparts A, B, and C originally adopted in R81-30 at 7 Ill. Reg. 16149, effective November 23, 1983. Subpart D originally adopted in R88-5(A) at 13 Ill. Reg. 12055, effective July 10, 1989; old Part repealed, new Part adopted in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 130.100 General

In accordance with 2 Ill. Adm. Code 2175.300, all files, records, and data of the Board are open to reasonable public inspection and copying in the Board's Chicago office except for information exempted from inspection by Section 7 of the Environmental Protection Act (Act) and Section 7 of the Freedom of Information Act (FOIA) [5 ILCS 140/7]. The following rules deal specifically with non-disclosable information and trade secret information.

## Section 130.102 Purpose

Section 7 of the Act provides that *all files, records, and data of the Agency, the Board, and the Department shall be open for reasonable public inspection...except for information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; and information concerning secret manufacturing processes or confidential data submitted by any person under the Act.* [415 ILCS 5/7] Section 7.1 of the Act provides that the Board shall adopt regulations...which prescribe: (1) procedures for determining whether articles represent a trade secret; and (11) procedures to protect the confidentiality of such articles. [415 ILCS 5/7.1(b)]

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## Section 130.104 Additional Procedures

Each agency may adopt additional procedures that are not inconsistent with this Part for the protection of articles that are claimed or determined to represent a trade secret.

## Section 130.106 Definitions and Severability

- a) Definitions. For the purpose of this Part, words and terms have the meanings set forth in 35 Ill. Adm. Code 101.Subpart B, unless otherwise provided or unless the context clearly indicates otherwise.
- b) Severability. If any provision of this Part or its application to any person is adjudged invalid, such adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

## Section 130.108 Segregation of Article

Any article, or any page or portion thereof, which is claimed or determined to be a trade secret or other non-disclosable information must be kept segregated from articles which are open to public inspection, and must be kept secure from unauthorized access.

## Section 130.110 Disposal of Articles

An agency may dispose of an article which is claimed or determined to represent a trade secret or other non-disclosable information, and any copies made of that article, only by shredding, burning, or returning the article and any copies to the owner.

## SUBPART B: PROCEDURES FOR IDENTIFYING ARTICLES THAT REPRESENT TRADE SECRETS

## Section 130.200 Initiation of a Claim that an Article is a Trade Secret

- a) The owner of an article may claim that the article is a trade secret only by providing the agency with the information required by subsection (b) of this Section at the time the owner submits the article to the agency. If the owner of the article submits the article to the agency without the information required by subsection (b) of this Section, the article will be considered a matter of general public knowledge and cannot be protected as a trade secret.
- b) Any person wishing to have an article considered as a trade secret must file with the agency holding the article and any hearing officer, the following information:
  - 1) A claim letter which clearly states the name of the article, gives a brief description of the article, and states that the



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article is claimed to represent a trade secret, as defined in these rules and the Act;

2) A copy of the article marked as provided in Section 130.302 of this Part; and

3) A statement of justification for the claim meeting the requirements of Section 130.202 of this Part and a waiver of the statutory deadlines for any agency decision as provided in Section 130.204 of this Part.

c) If an agency is provided with the information required in this Section, it must consider such article a trade secret and must protect such article from disclosure pursuant to Subpart C of this Part until a final determination is made by the agency and the appeal time has expired.

d) A person claiming trade secret protection for an article must serve all other parties to the case with the following:

1) A claim letter that clearly states the name of the article, gives a brief description of the article, and states that the article is claimed to represent a trade secret, as defined in these rules and the Act;

2) Where less than an entire article is claimed to represent a trade secret, a copy of the article marked and redacted as provided in Section 130.302(b)(4) of this Part; and

3) A statement of justification for the claim meeting the requirements of Section 130.202 of this Part and a waiver of the statutory deadlines for any agency decision as provided in Section 130.204 of this Part.

**Section 130.202 Contents of Statement of Justification**

A statement of justification must contain the following:

a) A detailed description of the procedures used by the owner to safeguard the article from becoming available to persons other than those selected by the owner to have access thereto for limited purposes;

b) A detailed statement identifying the persons or class of persons to whom the article has been disclosed;

c) A certification that the owner has no knowledge that the article has ever been published, disseminated or otherwise become a matter of general public knowledge;

d) A detailed discussion of why the owner believes the article to be of competitive value; and

e) Any other information that will support the claim.

**Section 130.204 Waiver of Statutory Deadlines**

When the owner of an article files with the agency an article and a claim that

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the article is a trade secret, the owner must simultaneously file with the agency a waiver of any statutory deadline for the agency to decide the underlying proceeding. The waiver must extend for at least 90 days past any statutory deadline for the agency to decide the underlying proceeding. This is to allow 45 days for the agency to decide the trade secret claim and 35 days for any appeal of the agency's trade secret determination, plus mailing time.

**Section 130.206 Response to the Trade Secret Claim**

Any party in a contested case before any of the agencies in which a trade secret claim is made will have 7 days in which to file a response to the trade secret claim. All responses must be filed with the agency holding the article, and served upon all other parties to the case, and the hearing officer if applicable.

**Section 130.208 Deadline for Agency Trade Secret Determination**

a) The agency must determine whether the article is a trade secret within 45 days after the date of receipt of a complete statement of justification as prescribed in Section 130.202 of this Part.

b) The owner of an article may extend the time period for the agency decision to determine whether the article is a trade secret by filing with the agency:

1) waiver of any statutory deadline for the agency to decide the underlying proceeding as provided for in Section 130.204 of this Part; and

2) a waiver of the deadline for the agency to determine whether the article is a trade secret.

c) The waiver described in subsection (b)(1) of this Section must be for at least the same amount of time as the waiver described in subsection (b)(2) of this Section, plus 45 days. This is to allow 35 days for any appeal of the agency's trade secret determination, plus mailing time.

**Section 130.210 Standards for Agency Determination**

a) An article will be determined to represent a trade secret if:

1) The owner has complied with the procedures for making a claim and justification as prescribed by this Part; and

2) The statement of justification demonstrates that:

A) The article has not been published, disseminated or otherwise become a matter of general public knowledge; and

B) The article has competitive value.

b) There will be a rebuttable presumption that an article has not been published, disseminated or otherwise become a matter of general public knowledge, if:

1) The owner has taken reasonable measures to prevent the article

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- from becoming available to persons other than those selected by the owner to have access to the article for limited purposes; and
- 2) The statement of justification contains a certification that the owner has no knowledge that the article has ever been published, disseminated, or otherwise become a matter of general public knowledge.
  - c) The agency may determine that any page or portion of the article is a trade secret without finding that the entire article is a trade secret.

**Section 130.212 Agency Actions Following a Negative Determination**

- a) If the agency determines that an article, or any page or portion thereof, does not meet the standards specified in subsection 130.210(a)(1) or (2) of this Part, the agency must deny the claim for trade secret protection for the article or page or portion thereof, and must give written notice of such denial to the owner of the article and any requester pursuant to subsection (b) of this Section.
- b) Written notice of the denial of a claim for trade secret protection must be given by certified mail, return receipt requested, and must contain the following information:
  - 1) A statement of the agency's reason for denying the claim;
  - 2) A notification of the availability of review of the agency decision pursuant to the procedures prescribed in Section 130.216 of this Part; and
  - 3) A notification that the agency will cease protecting the article, or the page or portion thereof, as a trade secret unless the agency is served with notice of the filing of a petition for review within 35 days after the date of notice to the owner.
- c) If the agency is served with notice of the filing of a petition for review of its determination within 35 days after the notice of denial to the owner, the agency must notify the requester of such action and must continue to protect the article, or the page or portion thereof, pursuant to Subpart C of this Part until such time as it receives official notification of a final order by a reviewing body with proper jurisdiction that does not reverse the agency determination and that is not subject to further appeal.
- d) If the agency does not receive the notification of a petition for review within 35 days or does receive official notification of a final, non-appealable action which does not reverse the agency determination, the article will not be protected pursuant to Subpart C of this Part and the agency must so notify the owner and any requester by certified mail, return receipt requested.

**Section 130.214 Agency Actions Following a Positive Determination**

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- a) If the agency determines that an article, or any page or portion thereof, meets the standards specified in subsection 130.210(a)(1) and (2) of this Part, the agency must grant the claim for trade secret protection for the article or page or portion thereof, and must give written notice to the owner and any requester by certified mail, return receipt requested, of such granting to the owner of the article pursuant to subsection (b) of this Section.
- b) Written notice of the granting of a claim for trade secret protection must be given by certified mail to all parties, return receipt requested, and must contain the following information:
  - 1) A statement of the agency's reasons for granting the claim;
  - 2) A notification of the availability of review of the agency's determination pursuant to the procedures prescribed in Section 130.216 of this Part; and
  - 3) A notification that the article, or the page or portion thereof, will be protected pursuant to Subpart C of this Part until such time as the agency receives official notification of a final order by a reviewing body that reverses the agency determination and that is not subject to further appeal.
- c) The agency must continue to protect an article, or the page or portion thereof, for which trade secret protection has been granted pursuant to Subpart C of this Part until such time as it receives official notification of a final order by a reviewing body with proper jurisdiction which reverses the agency determination and which is not subject to further appeal.

**Section 130.216 Review of Agency Trade Secret Determination**

- a) An owner or requester who is adversely affected by a final determination of either the Agency or Department pursuant to this Part may petition the Board to review the final determination within 35 days after entry of the determination.
  - 1) Appeals to the Board of the Agency's final decisions will be pursuant to 35 Ill. Adm. Code 105/Subparts A and B.
  - 2) Appeals to the Board of Department's final decisions will be pursuant to 35 Ill. Adm. Code 105/Subparts A and F.
- b) An owner or requester who is adversely affected by a final determination of the Board pursuant to this Part, may obtain judicial review from the appellate court by filing a petition for review pursuant to Section 41 of the Act.
- c) The failure of an agency to make a final determination within the time limits prescribed in this Part may be deemed to be a final determination for purposes of appeal.
  - 1) If an agency fails to make a final determination within the time limits, the agency must continue to protect the article as set out in Subpart C of this Part during the 35 day appeal time.

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- 2) If after 35 days no appeal is taken, the article will be treated as if it received a negative determination from the agency and the article will no longer be protected pursuant to Subpart C.

#### Section 130.218 Effect of a Determination of Trade Secret Status on Other Agencies

A claim or determination by one agency that an article is a trade secret made pursuant to this Part will apply to that same article when in the possession of either of the other two agencies. Notwithstanding the foregoing sentence, when such an article is the subject of a review before the Board pursuant to Section 130.216(a) of this Part, the article will be treated as a trade secret only unless or until the Board determines that the article is not a trade secret.

#### Section 130.220 Status of Article Determined or Claimed to be a Trade Secret Before the Effective Date of this Part

- a) Any article that was determined by an agency prior to the effective date of this Part to represent a trade secret in accordance with agency procedures adopted pursuant to the TAPA will be deemed to have been determined to represent a trade secret for the purposes of this Part. The agency must protect the article in accordance with Subpart C of this Part
- b) If an agency possesses an article that was claimed before the effective date of this Part to be a trade secret and the agency did not determine before the effective date of this Part whether the article is a trade secret in accordance with procedures adopted pursuant to the APA, the article is deemed to have been claimed to be a trade secret for the purposes of this Part for 180 days after the effective date of this Part. If the owner of the article fails to file within the foregoing 180-day period a claim with the agency under Section 130.200 of this Subpart with respect to the article, the article will be considered a matter of general public knowledge and cannot be protected as a trade secret.

#### Section 130.222 Extension of Deadlines to Participate in Proceedings

Upon the agency's finding that any person will be adversely affected in a proceeding before that agency due to the timing of the agency's determination of the trade secret status of an article and that the article is relevant to the proceeding, the agency must extend any deadline for the person to participate in that proceeding until 10 days after the agency determines the trade secret status of the article. The person has the burden to demonstrate that the person will be adversely affected in the proceeding due to the timing of the agency's trade secret determination and that the article is relevant to

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the proceeding.

#### SUBPART C: PROCEDURES FOR PROTECTING ARTICLES THAT REPRESENT TRADE SECRETS

##### Section 130.300 Applicability

Any article that is claimed or determined to represent a trade secret pursuant to Subpart B of this Part must be protected from unauthorized disclosure pursuant to this Subpart.

##### Section 130.302 Owner's Responsibility to Mark Article

- a) Where an entire article is claimed to represent a trade secret, the owner must mark the article with the words "Trade Secret" in red ink on the face or front of the article.
- b) Where less than an entire article is claimed to represent a trade secret, the owner must:
- 1) Mark the article with the words "Trade Secret" in red ink on the face or front of the article;
  - 2) Indicate on the face or front of the article which page or portion of the article is claimed to represent a trade secret;
  - 3) Mark every page or portion of the article which is claimed to represent a trade secret with the words "Trade Secret;" and
  - 4) Furnish the agency with a second copy of the article which is marked pursuant to paragraphs (1) and (2) of this subsection and from which the page or portion of the article that is claimed to represent a trade secret is deleted.

##### Section 130.304 Agency's Responsibility to Mark Article

- a) Where an entire article is determined to represent a trade secret pursuant to Section 130.210 of this Part, the agency must mark the article with the word "DETERMINED" in red ink on the face or front of the article and must also mark any claim letter submitted for the article.
- b) Where less than an entire article is determined to represent a trade secret pursuant to Section 130.210 of this Part, the agency must:
- 1) Mark the article with the word "DETERMINED" in red ink on the face or front of the article;
  - 2) Indicate on the face or front of the article and any claim letter submitted for the article which page or portion of the article is determined to represent a trade secret; and
  - 3) Mark every page or portion of the article which is determined to represent a trade secret with the word "DETERMINED."

##### Section 130.306 Transmission of Article Between Agencies

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Prior to transmitting any article which is claimed or determined to represent a trade secret to another agency, the agency must insure that the article is properly marked pursuant to Sections 130.302 and 130.304 of this Part and is clearly distinguished and segregated from other transmitted materials.

**Section 130.308 Public Access to Information Related to Article**

- a) A copy of the claim letter submitted pursuant to Section 130.200(b)(1) of this Part will be open to public inspection.
- b) Where an article was determined to represent a trade secret prior to the effective date of this Part and no claim letter exists, the agency must prepare a statement that will be open to public inspection, and that names and briefly describes the article.
- c) Where a page or portion of an article is claimed or determined to represent a trade secret, a copy of the article must be open to public inspection, with the part or portion of the article that is claimed or determined to represent a trade secret or that would lead to disclosure of the trade secret deleted.

**Section 130.310 Access to Claimed or Determined Article**

- a) The agency must designate the agency employees or officers who are authorized to review articles that are claimed to represent trade secrets for the purpose of making a determination pursuant to Section 130.210 of this Part.
- b) Access to an article that is claimed or determined to represent a trade secret must be limited to:
  - 1) Employees or officers designated pursuant to subsection (a) of this Section;
  - 2) Other employees, officers, or authorized representatives of the State specifically authorized by the agency to have access to the article for the purpose of carrying out the Act or regulations promulgated thereunder or when relevant to a proceeding under the Act; or
  - 3) Employees, officers, or authorized representatives of the United States who are specifically authorized by the agency to have access to the article for the purpose of carrying out federal environmental statutes or regulations.
- c) The agency must maintain the following information with regard to an article which is claimed or determined to represent a trade secret:
  - 1) A record of the number of copies held by the agency;
  - 2) A log of the location of all copies; and
  - 3) A log of all persons who are authorized to review the article or copies thereof.

**Section 130.312 Unauthorized Disclosure or Use of Article**

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- a) The agency must insure that all persons who are authorized to have access to an article that is claimed or determined to represent a trade secret are given notice of the restrictions on disclosure and use of the article contained in this Subpart.
- b) No agency officer, employee, or authorized representative may disclose, except as authorized by this Subpart, or use for private gain or advantage, any article that is claimed or determined to represent a trade secret.
- c) Each agency officer, employee, or authorized representative must take reasonable measures to safeguard an article that is claimed or determined to represent a trade secret and to protect against disclosure that is inconsistent with these rules.
- d) Each authorized representative of the agency who is furnished with access to an article that is claimed or determined to represent a trade secret pursuant to this Part must use or disclose that information only as authorized by the contract or agreement under which such person is authorized to represent the agency.

**Section 130.314 Limitation on Copying Article**

No agency officer, employee, or authorized representative of the State or the United States may copy an article which is claimed or determined to represent a trade secret pursuant to this Part except where authorized to do so by the agency officer or employee designated to review the article pursuant to subsection 130.312(a) of this Part. All copies must be recorded and logged in accordance with subsection 130.312(c) of this Part.

**SUBPART D: NON-DISCLOSABLE INFORMATION OTHER THAN TRADE SECRETS****Section 130.400 General**

This Subpart applies only to filings of articles with the Board, and only with respect to Board determinations of whether articles are non-disclosable information other than trade secrets. Trade secret determinations are addressed in Subparts A, B and C of this Part. "Non-disclosable information" will have the meaning as defined in 35 Ill. Adm. Code 101.Subpart B.

**Section 130.402 Who May View Non-Disclosable Information**

Any information accorded confidential treatment may be disclosed or transmitted to other officers, employees, including Board Members, Board attorneys, environmental scientists of the Board's technical unit, Board hearing officers, the Clerk, Assistant Clerk, or authorized representatives of this State or of the United States concerned with or for the purposes of carrying out this Act or the federal environmental statutes and regulations; provided, however, that such information shall be identified as confidential by...the Board..., as



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the case may be. [415 ILCS 5/7(e)]

## Section 130.404 Application for Non-Disclosure

- a) Except as provided in subsection (c)(4) of this Section, the applicant must file a single copy of the following:
  - 1) The article that is sought to be protected from disclosure; and
  - 2) The application for non-disclosure.
- b) When an entire article is sought to be protected from disclosure, the applicant must mark the article with the words "NON-DISCLOSABLE INFORMATION" in red ink on the face or front of the article.
- c) When less than an entire article is sought to be protected from disclosure, the applicant must:
  - 1) Mark the article with the words "NON-DISCLOSABLE INFORMATION" in red ink on the face or front of the article;
  - 2) Indicate on the face or front of the article which page or portion of the article is claimed to be non-disclosable information;
  - 3) Mark every page or portion of the article sought to be protected from disclosure with the words "NON-DISCLOSABLE INFORMATION;"
  - 4) File with the Clerk a second copy of the article that is marked pursuant to paragraphs (1) and (2) of this subsection and from which the page or portion sought to be protected from disclosure is deleted.
- d) In an adjudicatory proceeding, the applicant must serve all other parties to a proceeding and the hearing officer with the following:
  - 1) A copy of the application for non-disclosure under subsection (f) of this Section; and
  - 2) When less than an entire article is sought to be protected from disclosure, a copy of the article marked and redacted as provided in subsection (c)(4) of this Section.
- e) Each party served pursuant to subsection (d) of this Section may file a response to the application for non-disclosure within 7 days after the adjudicatory proceeding and the hearing officer.
- f) The application for non-disclosure must contain the following:
  - 1) Identification of the particular non-disclosure category into which the material that is sought to be protected from disclosure falls (see 35 Ill. Adm. Code 101.202 for the definition of "non-disclosable information");
  - 2) A concise statement of the reasons for requesting non-disclosure;
  - 3) Data and information on the nature of the material that is sought to be protected from disclosure, identification of the number and title of all persons familiar with such data and information, and a statement of how long the material has been protected from disclosure;

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- 4) An affidavit verifying the facts set forth in the application for non-disclosure that are not of record in the proceeding; and
- 5) A waiver of any decision deadline in accordance with Section 130.204 of this Part.

## Section 130.406 Public Inspection

- a) The public cannot inspect material for which a non-disclosure application is pending before the Board.
- b) If the Board determines that the material is not entitled to be protected from disclosure, the public cannot inspect the material:
  - 1) until the time for appeal of the Board's determination has expired; or
  - 2) if an appeal of the Board's determination is filed, until such time as the Board receives official notification of a final order of a court with proper jurisdiction that does not reverse the Board's determination and that is not subject to further appeal.
- c) If the Board determines that the material is entitled to be protected from disclosure, the Board will protect from public inspection any page or portion of the material that the Board determined to be non-disclosable information until such time as the Board receives official notification of a final order of a court with proper jurisdiction that reverses the Board's determination and that is not subject to further appeal.

## Section 130.408 Board Order

- a) If the Board determines that the article or any page or portion thereof is non-disclosable information, the Board will mark the word "DETERMINED" on the face or front and on every page or portion determined to be non-disclosable information.
- b) If the Board determines that the article, or any page or portion thereof is not non-disclosable information, the Board may enter a conditional non-disclosure order allowing the applicant to withdraw the material addressed in the order. If the applicant fails to withdraw the material by the deadline given in the Board order, the material will be returned to the Clerk's normal file and will be available for the public to inspect.

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1) Heading of the Part: Office of the State Fire Marshal Appeals

2) Code citation: 35 Ill. Adm. Code 107

3) Section Numbers: Proposed Action:

107.100 Repeal  
 107.101 Repeal  
 107.102 Repeal  
 107.103 Repeal  
 107.120 Repeal  
 107.121 Repeal  
 107.122 Repeal  
 107.123 Repeal  
 107.124 Repeal  
 107.140 Repeal  
 107.141 Repeal  
 107.160 Repeal  
 107.180 Repeal  
 107.181 Repeal  
 107.200 Repeal  
 107.201 Repeal  
 107.202 Repeal  
 107.220 Repeal  
 107.221 Repeal  
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 107.226 Repeal  
 107.227 Repeal  
 107.228 Repeal  
 107.240 Repeal  
 107.241 Repeal  
 107.242 Repeal  
 107.243 Repeal  
 107.244 Repeal  
 107.245 Repeal  
 107.246 Repeal  
 107.247 Repeal  
 107.260 Repeal  
 107.280 Repeal  
 107.300 Repeal  
 107.301 Repeal  
 107.302 Repeal  
 107.320 Repeal  
 107.340 Repeal

107.341 Repeal  
 107.342 Repeal  
 107.360 Repeal  
 107.361 Repeal  
 107.362 Repeal

4) Statutory authority: Implementing Section 57.9 and authorized by Section 26 of the Environmental Protection Act. [415 ILCS 5/26 and 57.9]

5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 (formally R97-8) proposes to repeal all of the Board's existing procedural rules, and adopt new procedural rules at Parts 101-108, Part 125 and Part 130.

6) Will these proposed rules replace emergency rules currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed rules contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of statewide policy objectives: While this proposed repealer does not impose a State mandate, the proposed new Part 107 imposes procedural mandates on units of local government to the extent they may appear before the Board.

11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

Clerk's Office  
 Illinois Pollution Control Board  
 100 W. Randolph St., Suite 11-500  
 Chicago, IL 60601

Request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620, or download from the Board's web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

12) Initial regulatory flexibility analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporations affected: None

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B) Reporting, bookkeeping or other procedures required for compliance:  
None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: January 2000

The full text of the proposed repealer begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

## PART 107

OFFICE OF THE STATE FIRE MARSHAL APPEALS (REPEALED)

## SUBPART A: GENERAL PROVISIONS

Section  
107.100 Applicability  
107.101 Severability  
107.102 General Overview  
107.103 Definitions

## SUBPART B: PLEADINGS AND PROCESS

Section  
107.120 Who May File; Parties  
107.121 Timely Petition  
107.122 Contents of the Petition  
107.123 Service  
107.124 OSFM Appearance and Record

## SUBPART C: INITIAL BOARD ACTION

Section  
107.140 Preliminary Board Determination: Accept for Hearing  
107.141 Preliminary Board Determinations: Insufficient Petition

## SUBPART D: NOTICE OF HEARING

Section  
107.160 Authorization of Hearing

## SUBPART E: AUTHORITY AND DUTIES OF HEARING OFFICERS

Section  
107.180 Authority of Hearing Officers  
107.181 Duties of Hearing Officers

SUBPART F: PRE-HEARING MATTERS, DISCOVERY,  
ADMISSIONS AND SUBPOENAS

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## Section

107.200 Pre-Hearing Conference  
107.201 Discovery in General  
107.202 Subpoenas

## SUBPART G: MOTION PRACTICE

## Section

107.220 Filing and Contents of Motions and Responses  
107.221 Motions Attacking Jurisdiction or Sufficiency of the Pleadings  
107.222 Motions Preliminary to Hearing  
107.223 Effect of Filing and Disposition of Motions  
107.224 Voluntary Dismissal  
107.225 Motions to Cancel Hearing  
107.226 Motions to Stay  
107.227 Motions for Summary Judgment  
107.228 Motions for Reconsideration

## SUBPART H: HEARINGS

## Section

107.240 Hearings Open to the Public  
107.241 Order of Cases  
107.242 Order of Proceedings  
107.243 Testimony at Hearing  
107.244 Admissibility of Evidence  
107.245 Examination of Adverse and Hostile Witnesses  
107.246 Amendment of Pleadings  
107.247 Default

## SUBPART I: PUBLIC PARTICIPATION

## Section

107.260 Statements from Interested Persons

## SUBPART J: SETTLEMENT

## Section

107.280 Settlement

## SUBPART K: POST-HEARING MATTERS

## Section

107.300 Hearing Transcripts  
107.301 Written Briefs  
107.302 Record of Proceeding

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## SUBPART L: SANCTIONS

Section  
107.320 Sanctions

## SUBPART M: FINAL BOARD ACTION

Section  
107.340 Standard of Review  
107.341 Contents of Board Opinions  
107.342 Duties of the Clerk

SUBPART N: MOTIONS FOR RECONSIDERATION  
AND RELIEF FROM FINAL BOARD ORDERS

Section  
107.360 Motions for Reconsideration  
107.361 Relief from Final Orders  
107.362 Judicial Review of Final Board Orders

**AUTHORITY:** Authorized by Section 26 and implementing Section 57.9(c) of the Environmental Protection Act [415 ILCS 5/26 and 57.9(c)] (see P.A. 88-496, effective September 13, 1993).

**SOURCE:** Adopted in R94-11 at 18 Ill. Reg. 16594, effective November 1, 1994; Part repealed in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**BOARD NOTE:** This Part implements the Illinois Environmental Protection Act as of July 1, 1994.

## SUBPART A: GENERAL PROVISIONS

## Section 107.100 Applicability

This Part applies to proceedings before the Illinois Pollution Control Board (Board) concerning appeals from Office of State Fire Marshal (OSFM) final determinations made pursuant to Section 57.9(c) of the Environmental Protection Act [415 ILCS 5/57.9(c)]. This Part shall be read in conjunction with 35 Ill. Adm. Code 101 which contains procedures generally applicable to Board proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part shall apply.

## Section 107.101 Severability

If any provision of this Part or its application to any person or under any

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"Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank. (42 U.S.C. Sec. 6991.)

Board Note: A person who voluntarily undertakes action to remove an underground storage tank system from the ground shall not be deemed an "operator" merely by the undertaking of such action.

"Owner" means:

In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances;

In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such underground storage tank immediately before the discontinuation of its use. (42 U.S.C. Sec. 6991.)

"Registration" means registration of an underground storage tank with the OSFM in accordance with Section 4 of the Gasoline Storage Act [430 ILCS 15/4].

"Site" means any single location, place, tract of land or parcel of property including contiguous property not separated by a public right-of-way. (Section 57.2 of the Act.)

"Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any of the following or any pipes connected thereto:

Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

Septic tank;

Pipeline facility (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.), or the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.), or which is an intrastate pipeline facility regulated under State laws as provided in either of these provisions of law, and which is determined by the Secretary to be connected to a pipeline or to be operated or intended to be

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circumstances is adjudged invalid, such adjudication shall not affect the validity of this part as a whole or of any portion not adjudged invalid.

Section 107.102 General Overview

These procedural rules promote administrative efficiency in the Board's consideration of appeals of OSFM Eligibility and Deductibility Final Determinations. The process before the Board includes, but is not limited to, the following steps. Upon receipt of a petition for review, unless the Board or its designee makes a preliminary determination that the petition is insufficient, a hearing date and location will be assigned. Though hearings will be publicly-noticed in the county where the underground storage tank site is located, in most cases the hearings will take place in either Chicago or Springfield. The Board envisions that if the parties enter into settlement prior to or during the hearing process, the parties may request that the Board accept and enter a final order adopting a proposed settlement agreement; such an order may be requested with or without a hearing.

Section 107.103 Definitions

Except as otherwise defined in this section, definitions of terms used in this Part shall be those used in the Environmental Protection Act [415 ILCS 5].

"Act" means the Environmental Protection Act [415 ILCS 5].

"Board" means the Illinois Pollution Control Board or its designee.

"Eligibility and Deductibility Determination Form" means a form provided by the Office of State Fire Marshal to the owner or operator either on site or within 15 days after receipt of notice indicating a confirmed release. (Derived from Section 57.9(c) of the Act.)

"Eligibility and Deductibility Final Determination" means the letter issued by the Office of State Fire Marshal enunciating the final eligibility and deductibility determination of an owner or operator who has reported a confirmed release of a regulated substance to access the Underground Storage Tank Fund. (Derived from Section 57.9(c) of the Act.)

"Fund" means the underground storage tank fund. (Section 57.2 of the Act.)

"IEMA" means the Illinois Emergency Management Agency.

"OSFM" means the Office of State Fire Marshal.

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capable of operating at pipeline pressure or as an integral part of a pipeline;

Surface impoundment, pit, pond, or lagoon;

Storm water or waste water collection system;

Flow-through process tank;

Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or  
Storage tank situated in an underground area (such as a basement, cellar, mine-working, drift, shaft, or tunnel) if the storage tank is situated on or above the surface of the floor. (Derived from 42 U.S.C. Sec. 6991.)

*The term "underground storage tank" shall also mean an underground storage tank used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit. (Section 57.2 of the Act.)*

## SUBPART B: PLEADINGS AND PROCESS

## Section 107.120 Who May File; Parties

Any owner or operator of an underground storage tank who has been issued an "Eligibility and Deductibility Final Determination" letter may file a petition with the Board seeking review of that final decision. The owner/operator shall be named as the petitioner, and the OSFM shall be named as the respondent. Filing requirements are set forth at 35 Ill. Adm. Code 101.Subpart A.

## Section 107.121 Timely Petition

The petition for review must be filed with the Board within 35 days after the date of the OSFM's "Eligibility and Deductibility Final Determination" letter. There shall be a rebuttable presumption that petitioner received the OSFM's "Eligibility and Deductibility Final Determination" letter four days from the date indicated on the letter.

## Section 107.122 Contents of the Petition

A petition for review must include:

- a) A copy of the OSFM's "Eligibility and Deductibility Final Determination" letter;
- b) A complete and precise description of the underground storage tank

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site, including but not limited to the location of the site, including the county, the number of underground storage tanks on-site, the substance(s) stored in each tank, the date of the tank(s) registration; and the date of IEWA notification;

c) A concise statement of the relief being sought before the Board;

d) A concise statement of the issues on review before the Board;

e) If the owner or operator is represented by counsel, an appearance shall be filed in conjunction with the petition;

f) Documentation to demonstrate the petition's timely filing; and

g) A request to hold the hearing in either Springfield or Chicago, or a request to conduct the hearing at a specified location other than Springfield or Chicago, specifying the reasons for that request. A hearing will be held in an alternate location only to prevent material prejudice or undue delay.

## Section 107.123 Service

a) The petitioner shall serve all filings upon the OSFM. All filings shall be accompanied by a notice of filing.

b) Methods and proof of service, as well as the effective date of service, are governed by 35 Ill. Adm. Code 101.Subpart C.

## Section 107.124 OSFM Appearance and Record

a) The OSFM shall appear as a respondent.

b) Within 14 days after receipt of the notice of filing of the petition for review, the OSFM shall file an appearance and the record before the Board. The record shall include all information which served as a basis for the OSFM's "Eligibility and Deductibility Final Determination" letter, including but not limited to:

- 1) A copy of the "Eligibility and Deductibility Final Determination" letter;
- 2) A completed copy of the "Eligibility and Deductibility Determination Form" upon which the OSFM made its final determination;
- 3) Any and all correspondence with the applicant;
- 4) Any and all forms completed by the owner or operator which served as a basis for the OSFM final decision; and
- 5) Any memoranda or correspondence which served as a basis for the OSFM final decision.

## SUBPART C: INITIAL BOARD ACTION

## Section 107.140 Preliminary Board Determination: Accept for Hearing

a) Upon receipt of the petition for review, unless the Board makes a

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- preliminary determination that the petition is insufficient pursuant to Section 107.122, a hearing date and location will be assigned.
- b) If the petition does not satisfy Section 107.122, the case shall be referred to the Board for consideration pursuant to Section 107.141.

**Section 107.141 Preliminary Board Determinations: Insufficient Petition**

On its own motion, the Board may determine that a petition for review is untimely, insufficient, or otherwise improperly filed. If such a determination is made, the Board may either dismiss the petition or direct that an amended petition be filed. Upon the filing of a sufficient amended petition, the case may be set for hearing pursuant to Section 107.160.

## SUBPART D: NOTICE OF HEARING

**Section 107.160 Authorization of Hearing**

- a) The Board will set a case for hearing. The hearing will be held within 60 days after the filing of the petition for review unless the Board orders otherwise to prevent material prejudice.
- b) The hearing will be held in either Springfield or Chicago or in such other place as the hearing officer or the Board may designate to prevent material prejudice or undue delay.
- c) Upon the case being set for hearing, the Clerk will cause notice of the hearing to be published. Public notice will be published at least 21 days before the hearing by public advertisement in a newspaper of general circulation in the county in which the UST site in question is located.

## SUBPART E: AUTHORITY AND DUTIES OF HEARING OFFICERS

**Section 107.180 Authority of Hearing Officers**

The hearing officer shall have all powers necessary to schedule and conduct a fair hearing, including but not limited to the following:

- a) Issue discovery orders whenever the parties cannot agree upon the legitimate scope of discovery, including the setting of a schedule for the orderly submission of discovery;
- b) Issue protective orders pursuant to Section 107.201(e) below;
- c) Rule on objections to discovery pursuant to Section 107.201(f) below;
- d) Hold pre-hearing conferences for settlement, simplification of issues or any other purpose;
- e) At hearing, rule on objections and offers of proof, and receive evidence in accordance with Section 107.244 below;
- f) Administer oaths and affirmations;
- g) Regulate the course of the hearings, and the conduct of the parties

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- and counsel:
- h) Consider and rule on any non-dispositive motions;
  - i) Examine the witnesses to insure a clear and complete record;
  - j) Determine that a witness is adverse or unswearing pursuant to Section 107.245 below; and
  - k) Compel the appearance at hearing of an officer, director or employee of a party pursuant to Section 107.245 below.

**Section 107.181 Duties of Hearing Officers**

The hearing officer has the duty to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear and complete record. Additionally, it is the hearing officer's duty to accomplish the following:

- a) Establish a schedule for submission of briefs to the Board. All schedules and any modifications to schedules shall be in writing, and shall be submitted to the Board by the hearing officer no later than 5 days after hearing;
- b) At the conclusion of the hearing, the hearing officer shall make a statement both on the record and in writing as to the credibility of witnesses. This statement shall be based on his legal judgment and experience and shall indicate whether he finds credibility to be an issue and if so, the reasons why. This statement shall become part of the official record;
- c) The hearing officer shall transmit to the Clerk any exhibits, offers of proof not included in the hearing transcript, and any written statements submitted pursuant to Section 107.280(b); and
- d) The hearing officer shall file a copy of all correspondence, schedules and hearing officer orders with the Clerk, and serve all parties pursuant to 35 Ill. Adm. Code 101.142.

## SUBPART F: PRE-HEARING MATTERS, DISCOVERY, ADMISSIONS AND SUBPOENAS

**Section 107.200 Pre-Hearing Conference**

- a) On the hearing officer's own motion, or on motion by a party, the hearing officer may direct the parties or their attorneys to appear at a specified time and place for a conference for, among other reasons, the following purposes:

- 1) Simplifying the issues;
- 2) Amending the pleadings for clarification, amplification, or limitation;
- 3) Making admissions of fact or stipulating to the admissibility of any matter;
- 4) Limiting the number of witnesses;

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- 5) Exchanging prepared testimony and exhibits; and
- 6) Aiding in the simplification of the evidence and disposition of the proceeding.
- b) A pre-hearing conference may also be held by telephone.
- c) Substantive action taken at the pre-hearing conference shall be noted by the hearing officer, either on the record at hearing or in writing.

**Section 107.201 Discovery in General**

- a) Scope of Discovery: All relevant information and information calculated to lead to relevant information is discoverable, unless privileged.
- b) Disagreements on Discovery: If the parties cannot agree on the scope of discovery or the time or location of any deposition, the hearing officer shall have the authority to order discovery or to deny requests for discovery.
- c) Time for Discovery: All discovery must be completed prior to the scheduled hearing in the case. Disputes over the timing of discovery shall be directed to the hearing officer.
- d) Purpose of Discovery: All depositions and interrogatories shall be for purposes of discovery only, except for the following purposes:
  - 1) Impachment of the testimony of the deponent or interrogated person;
  - 2) As an admission of the deponent or interrogated person; or
  - 3) As evidence, upon motion to the hearing officer, upon a showing that at the time of hearing the person deposed or interrogated will not be available to participate in the hearing because of exceptional circumstances, including, but not limited to, death, age, sickness, infirmity, or absence from the country.
- e) Protective Orders: The hearing officer may, upon his own initiative, or on the motion of any party or witness, issue protective orders denying, limiting, conditioning or regulating discovery to prevent unreasonable expense, harassment, or oppression, and to expedite resolution of the proceeding.
- f) Objections to Discovery: Unless a claim of privilege is asserted, it is not a ground for objection that the testimony of a deponent or person interrogated will be inadmissible at hearing, if the information sought is reasonably calculated to lead to relevant information. All objections to rulings of the hearing officer shall be made on the record at hearing, or in writing prior to hearing.
- g) Failure to Comply: Failure to comply with any order regarding discovery shall subject the offending persons to sanctions pursuant to Subpart L below.
- h) If any person in bad faith files any request for discovery or answers to discovery, or knowingly gives a false answer to discovery questions, the Board, upon motion or on its own initiative, may impose

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sanctions pursuant to Subpart L below.

**Section 107.202 Subpoenas**

Subpoenas are governed by the provisions of 35 Ill. Adm. Code 101.260.

## SUBPART G: MOTION PRACTICE

**Section 107.220 Filing and Contents of Motions and Responses**

Filing and contents of motions are governed by 35 Ill. Adm. Code 101.241 and 101.242.

**Section 107.221 Motions Attacking Jurisdiction or Sufficiency of the Pleadings**

Motions attacking jurisdiction or the sufficiency of pleadings shall be filed pursuant to 35 Ill. Adm. Code 101.243.

**Section 107.222 Motions Preliminary to Hearing**

Motions preliminary to hearing (except motions to cancel hearing, governed by Section 107.225) shall be filed pursuant to 35 Ill. Adm. Code 101.245.

**Section 107.223 Effect of Filing and Disposition of Motions**

Provisions regarding the effect of filing a motion, and the disposition of motions, are set forth at 35 Ill. Adm. Code 101.247. Appeals of hearing officer rulings to the Board are governed by 35 Ill. Adm. Code 101.247(b).

**Section 107.224 Voluntary Dismissal**

A motion by petitioner to voluntarily dismiss an appeal shall be directed to the Board. Such motion may be made orally at hearing, or filed in writing prior to entry of the Board's decision. If made orally, that motion will be recorded by the hearing officer in writing and transmitted to the Board within 5 days after the close of that hearing.

**Section 107.225 Motions to Cancel Hearing**

- a) Time for Filing: Unless otherwise provided by Board or hearing officer order, requests for cancellation of hearing may be granted upon motion to the hearing officer, filed no less than 10 days, or 5 days if the motion is agreed to by all parties, before the scheduled hearing date. Any motion for cancellation filed less than 10 days, or 5 days if the motion is agreed to by all parties, before the hearing date may be granted only upon a showing by the movant that moving

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would suffer material prejudice if the hearing was not cancelled. Motions to cancel hearing based upon a settlement agreement are exempt from this Section, and are covered by Section 107.280 of this Part.

- b) Contents: All motions for cancellation shall be supported by an affidavit of the person or persons having knowledge of the facts supporting the request for cancellation. The affidavit shall include the factual bases for the cancellation, a complete status report detailing the progress of the proceeding, the number of cancellations previously granted, and a proposed date for rescheduling the hearing. The hearing officer shall grant the motion only upon a showing that the request for cancellation is not the result of lack of due diligence by the movant.

**Section 107.226 Motions to Stay**

- a) Motions to stay a proceeding shall be directed to the Board. All motions to stay shall include a complete status report detailing the progress of the proceeding and a proposed date for further action in the proceeding.
- b) The Board will act upon all motions to stay. If the motion to stay is granted, the Board may direct the hearing officer to require status reports during the pendency of the stay.
- c) At the conclusion of the stay, the hearing officer will contact the parties and establish a new hearing schedule, unless the case is otherwise resolved.

**Section 107.227 Motions for Summary Judgment**

- a) Motion: Any time after the opposing party has appeared (or after the expiration of time within which any party is required to appear), but no less than 21 days prior to the scheduled hearing, a party may move the Board for summary judgment for all or any part of the relief sought.
- b) Response: Any response to a motion for summary judgment shall be filed within 14 days from service of that motion.
- c) Reply: The moving party shall not have the right to reply to a response, unless allowed by the Board or the hearing officer to prevent material prejudice.
- d) Board Determination: The Board will enter summary judgment if the pleadings, depositions and admissions on file, together with any affidavits, show that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law.
- e) Any party wishing to cancel hearing pending decision on a motion for summary judgment shall file a motion to cancel hearing pursuant to Section 107.225 of this Part.

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**Section 107.228 Motions for Reconsideration**

- a) Any motion for reconsideration or modification of a Board order shall be filed within 35 days after the adoption of the order.
- b) Any response to a motion for reconsideration or modification shall be filed within 14 days from the service of the motion.
- c) A timely-filed motion for reconsideration or modification stays the effect of the final order, including the time for appeal of the order, until final disposition of the motion.
- d) In ruling upon a motion under this Section, the Board will consider factors including, but not limited to, error in the decision and facts in the record which were overlooked.

## SUBPART H: HEARINGS

**Section 107.240 Hearings Open to the Public**

All hearings conducted under this Part shall be open to the public.

**Section 107.241 Order of Cases**

In the event that more than one eligibility/deductibility determination appeal is scheduled for hearing on the same day, cases will be heard in numerical order, by docket number, with the exception that any case with a completed stipulation and settlement pursuant to Section 107.300 shall be heard first. The order of hearing of cases shall be subject to modification by the hearing officer in order to avoid material prejudice or undue delay.

**Section 107.242 Order of Proceedings**

- a) The following shall be the order of proceedings for all hearings:
- 1) Opening of the record of hearing and introduction of the parties by the hearing officer;
  - 2) Presentation, argument, and disposition of motions preliminary to hearing;
  - 3) Presentation of opening statements, with petitioner proceeding first and respondent proceeding second;
  - 4) Petitioner's case in chief;
  - 5) Respondent's case in chief;
  - 6) Oral and/or written statements from interested persons, as authorized by the hearing officer pursuant to Section 107.260 below;
  - 7) Respondent's case in rebuttal, limited to the rebutting of statements and assertions contained in the oral and written statements allowed pursuant to subsection (a)(6) above;
  - 8) Petitioner's case in rebuttal;

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- 9) Respondent's closing arguments, including legal arguments;
  - 10) Petitioner's closing arguments, including legal arguments; and
  - 11) Scheduling submission of written briefs, if any.
- b) The order of hearing specified in subsection (a) above shall be subject to modification by the hearing officer in order to avoid material prejudice or undue delay.

**Section 107.243 Testimony at Hearing**

All witnesses shall be sworn and shall testify under oath. All testimony at hearing shall be subject to cross-examination by any party.

**Section 107.244 Admissibility of Evidence**

- a) Admissibility: The hearing officer shall admit evidence which is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part.
- b) Hearsay: The hearing officer may admit hearsay evidence which is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless such evidence is privileged.
- c) When the admissibility of evidence depends upon an arguable interpretation of substantive law, the hearing officer shall admit such evidence.
- d) Scientific Articles and Treatises: Relevant scientific or technical articles, treatises, or materials may be introduced into evidence by a party, subject to refutation or disputation through introduction of documentary evidence or expert testimony.
- e) Written testimony: Written testimony may be introduced by a party only if the persons whose written testimony is introduced are available for cross-examination at hearing.
- f) Admission of business records: A writing or record, whether in the form of any entry in a book or otherwise made as a memorandum or record of any act, transaction, occurrence, or event, may be admissible as evidence of the act, transaction, occurrence, or event. To be admissible, the writing or record shall have been made in the regular course of business, provided it was the regular course of business to make such a memorandum or record at the time of such act, transaction, occurrence, or event, or within a reasonable time thereafter. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be admitted to affect the weight of the evidence, but shall not affect admissibility. The term "business", as used in this subsection (f), includes business, profession, occupation, and calling of every kind.
- g) Prior Inconsistent Statements: Prior statements made under oath may be admitted to impeach a witness if the statement is inconsistent with

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the witness' testimony at hearing.

**Section 107.245 Examination of Adverse and Hostile Witnesses**

- a) Adverse Witnesses: At hearing, upon motion to the hearing officer, any party, or any person for whose immediate benefit the action is prosecuted or defended, or the officers, directors, managing agents, or foremen of any party may be called as an adverse witness. Adverse witnesses may be examined as if under cross-examination. The party calling for the adverse witness may rebut the testimony and may impeach the witness.
- b) Hostile Witnesses: If the hearing officer determines that any witness is hostile or unwilling, the witness may be examined by the party calling the witness as if under cross-examination.

**Section 107.246 Amendment of Pleadings**

Proof may depart from pleadings, and pleadings may be amended to conform with the proof, so long as no unfair surprise results that cannot be remedied by a continuance which could be granted consistent with the minimum timelines prescribed by this Part.

**Section 107.247 Default**

Failure of a party to appear at the hearing, or failure to proceed as ordered by the Board or hearing officer, shall constitute default.

## SUBPART I: PUBLIC PARTICIPATION

**Section 107.260 Statements from Interested Persons**

- a) Oral statements: The hearing officer may permit any person not a party and not otherwise a witness for a party, to make oral statements on the record when time, facilities and concerns for a clear and concise hearing record allow so. Such oral statements shall be made under oath and are subject to cross-examination.
- b) Written statements: Any person not a party and not otherwise a witness for a party may submit written statements relevant to the subject matter at any time prior to hearing or at hearing. Any persons submitting such a statement shall be subject to cross-examination by any party. Written statements submitted without the availability of cross-examination will be treated as public comment and shall be afforded lesser weight than evidence subject to cross-examination.

## SUBPART J: SETTLEMENT



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**Section 107.280 Settlement**

- a) All parties to any case in which settlement is reached shall file, for the Board's approval, a proposed stipulation and settlement signed by all the parties or their authorized representatives, outlining the nature of, the reasons for, and the purpose to be accomplished by a settlement.

- 1) Parties wishing to settle without a hearing in the case must file the information required in subsection (a) above with the Board, and serve upon the hearing officer, before the close of business at least 3 business days before the scheduled hearing date. Any motion to cancel hearing filed less than 3 business days before the hearing date may be granted only upon a showing that material prejudice would result from a failure to cancel hearing.
- 2) Stipulations and settlement agreements not filed at least 3 business days before the hearing shall be filed with the hearing officer at the time of the scheduled hearing, unless the hearing is canceled pursuant to subsection (a)(1) above.
- b) The stipulation shall contain a full statement of all material facts pertaining to the nature of the OSFM's determination of deductibility or eligibility.
- c) If the provisions of subsection (a)(1) above are fulfilled, the Board may accept a stipulation and settlement without a public hearing.

## SUBPART K: POST-HEARING MATTERS

**Section 107.300 Hearing Transcripts**

The Board will provide for a court reporter who shall transcribe the entire hearing. The original transcription shall be filed with the Board. Any party or witness may move to correct the transcript within 7 days after the filing of the transcript with the Board.

**Section 107.301 Written Briefs**

- a) Except as otherwise directed by the Board, all briefs shall be filed in accordance with the briefing schedule established by the hearing officer pursuant to Section 107.181 of this Part. Any party may move the Board for an extension of time to file briefs in accordance with Subpart G of this Part.
- b) The briefs shall set forth the party's legal arguments including citation to authorities and to the pages of the record relied upon. All briefs shall comply with the provisions of 35 Ill. Adm. Code 101.104.
- c) The parties may waive their right to file a brief either orally on the record at hearing or by written motion.

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**Section 107.302 Record of Proceeding**

All pleadings, motions, orders, briefs, the transcript of hearing, offers of proof, exhibits, any written statements from the public, and stipulation and settlement agreements shall constitute the record.

## SUBPART L: SANCTIONS

**Section 107.320 Sanctions**

The imposition of sanctions for refusal to comply with procedural rules, Board orders, or hearing officer orders, or for abuse of discovery procedures, are governed by 35 Ill. Adm. Code 101. Subpart J.

## SUBPART M: FINAL BOARD ACTION

**Section 107.340 Standard of Review**

The standard of review of an OSFM final determination is whether the application, as submitted to OSFM, demonstrates compliance with the Act and Board regulations.

**Section 107.341 Contents of Board Opinions**

- a) The Board will issue a written opinion and order stating the facts and reasons leading to its decision.
- b) The Board's opinions and orders will include, but are not limited to, findings of fact and conclusions of law.

**Section 107.342 Duties of the Clerk**

The Clerk shall certify and maintain copies of the opinions and orders of the Board, with the vote of each Board member recorded. The Clerk shall serve all parties with a copy of such opinions and orders by certified mail, return receipt requested.

SUBPART N: MOTIONS FOR RECONSIDERATION  
AND RELIEF FROM FINAL BOARD ORDERS**Section 107.360 Motions for Reconsideration**

Motions for reconsideration of a final Board order shall be filed and acted upon pursuant to Section 107.228 above.

**Section 107.361 Relief from Final Orders**

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- a) Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Board at any time on its own initiative or on the motion of any party and after such notice, if any, as the Board orders. Such mistakes may be so corrected by the Board before any appeal is docketed in the appellate court. Thereafter, while the appeal is pending, such mistakes may be corrected only with leave of the appellate court. Any corrected order will be mailed to all parties and participants in that proceeding.
- b) On written motion, the Board may relieve a party from a final order entered in a contested case, for the following:
- 1) Newly discovered evidence which existed at the time of hearing and which by due diligence could not have been timely discovered;
  - 2) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
  - 3) Void order, such as an order based upon defective subject-matter jurisdiction.
- c) A motion under this Section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the order was entered but is not a continuation of the proceeding. The motion must be supported by affidavit or other appropriate showing as to matters not of record, and must be served on all parties to the proceeding.
- d) A motion under subsection (b) above shall be filed with the Board within one year after entry of the order.
- e) Any response to a motion under this Section shall be filed within 14 days after the filing of the motion.

## Section 107.362 Judicial Review of Final Board Orders

Judicial review of final Board orders shall be pursuant to Section 41 of the Act. Appeal is directly to the appellate court.

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## NOTICE OF PROPOSED RULES

- 1) **Heading of the Part:** Petition to Review Pollution Control Facility Siting Decisions
- 2) **Code citation:** 35 Ill. Adm. Code 107
- 3) **Section Numbers:**
- |         |             |                         |
|---------|-------------|-------------------------|
| 107.100 | New Section | <b>Proposed Action:</b> |
| 107.102 | New Section |                         |
| 107.104 | New Section |                         |
| 107.106 | New Section |                         |
| 107.200 | New Section |                         |
| 107.202 | New Section |                         |
| 107.204 | New Section |                         |
| 107.206 | New Section |                         |
| 107.208 | New Section |                         |
| 107.300 | New Section |                         |
| 107.302 | New Section |                         |
| 107.304 | New Section |                         |
| 107.306 | New Section |                         |
| 107.308 | New Section |                         |
| 107.400 | New Section |                         |
| 107.402 | New Section |                         |
| 107.404 | New Section |                         |
| 107.500 | New Section |                         |
| 107.502 | New Section |                         |
| 107.504 | New Section |                         |
| 107.506 | New Section |                         |

- 4) **Statutory authority:** 415 ILCS 5/26, 27, 39.2, and 40.1 of the Illinois Environmental Protection Act (415 ILCS 5).

- 5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules, and adopt new procedural rules at Parts 101-130. Part 107 proposes new procedures for appeals of Pollution Control Facility (PCF) siting decisions by local government pursuant to Section 40.1 of the Act. This Part mirrors Part 105, as Section 40.2 requires that Section 40 procedures be followed. Subpart B, "Petition for Review" and Subpart D, "Hearing" should eliminate confusion about who may participate in these proceedings and in what manner. Subpart C, "Filing of the Local Record" contains instructions to the county or municipal clerk that had formerly been contained in the Board's "set for hearing" orders. Subpart E, "Board Review and Decision" articulates the major statutory and case law standards the Board must consider in reaching decisions, and suggests what actions the Board may take when its review is complete. The Board's standard of review in these cases is whether the decision made by a local

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## NOTICE OF PROPOSED RULES

government is against the manifest weight of the evidence.

- 6) Will these proposed rules replace emergency rules currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed rules contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of statewide policy objectives: This rulemaking imposes procedural mandates on units of local government to the extent they may appear before the Board.
- 11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

Clerk's Office  
Illinois Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601

Interested persons may request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620 or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

Additionally, the Board will hold two public hearings on these rules. The first hearing will be April 11, 2000 at 1:30 p.m. at:

Illinois Pollution Control Board  
Hearing Room 403  
600 S. Second Street  
Springfield, IL

The second hearing will be May 4, 2000 at 1:30 p.m. at:

James R. Thompson Center  
Room 9-040  
100 W. Randolph Street  
Chicago, IL

- 12) Initial regulatory flexibility analysis:

A) Types of small businesses, small municipalities, and not-for-profit

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corporations affected: This rulemaking affects those small businesses, small municipalities, and not-for-profit corporations that appear before the Board.

- B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments do not require extensive reporting, bookkeeping or other procedures.
- C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.

- 13) Regulatory Agenda on which this rulemaking was summarized: January 2000

The full text of the proposed rule begins on the next page:

POLLUTION CONTROL BOARD  
NOTICE OF PROPOSED RULES  
TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER 1: POLLUTION CONTROL BOARD

PART 107  
PETITION TO REVIEW POLLUTION CONTROL FACILITY SITING DECISIONS

SUBPART A: GENERAL PROVISIONS

Section  
107.100  
107.102  
107.104  
107.106

Applicability  
Severability  
Definitions  
Description

SUBPART B: PETITION FOR REVIEW

Section  
107.200  
107.202  
107.204  
107.206  
107.208

Who May File Petition  
Parties  
Time For Filing Petition  
Filing and Service Requirements  
Petition Content Requirements

SUBPART C: FILING OF LOCAL RECORD

Section  
107.300  
107.302  
107.304  
107.306  
107.308

Record  
Filing of the Record  
Record Contents  
Preparing of the Record  
Certification of Record

SUBPART D: HEARING

Section  
107.400  
107.402  
107.404

General  
Authority and Duties of Hearing Officer  
Public Participation

SUBPART E: BOARD REVIEW AND DECISION

Section  
107.500  
107.502  
107.504  
107.506

Preliminary Board Determination/Set for Hearing  
Dismissal of Petition  
Decision Deadline  
Burden of Proof/Standard of Review

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and Implementing Sections 39.2, and 40.1 of

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the Act [415 ILCS 5/39.2 and 40.1].

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579, effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old part repealed, new Part adopted in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: GENERAL PROVISIONS

Section 107.100 Applicability

- a) This Part applies to adjudicatory proceedings before the Board concerning petitions to review a pollution control facility siting decision made by local government pursuant to Sections 39.2 and 40.1 of the Act.
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

Section 107.102 Severability

If any provision of this Part or its application to any person is adjudged invalid, such adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 107.104 Definitions

For purposes of this Part, words and terms will have the meaning as defined in 35 Ill. Adm. Code 101. Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

Section 107.106 Description

Pursuant to Section 39(c) of the Act, any new pollution control facility, prior to receiving a permit from the Agency to construct and operate, must first receive siting approval from the County Board of the county if in an

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*unincorporated area, or the governing body of the municipality when in an incorporated area, in which the facility is to be located. [415 ILCS 5/39(c)]* Such siting approval can only be given pursuant to Section 39.2 of the Act and only after the local unit of government conducts a public hearing that complies with the requirements of Section 39.2(d) and with general standards of fundamental fairness. Pursuant to Section 40.1 of the Act, a decision of local government to site or deny siting of a new pollution control facility is reviewable by the Board. The decision of the Board is appealable to the Illinois appellate court.

SUBPART B: PETITION FOR REVIEW

Section 107.200 Who May File Petition

The following persons may file a petition for review of a decision concerning siting of a new pollution control facility pursuant to Section 40.1 of the Act:

- a) Siting applicants. Any person who has properly applied to one or more units of local government, pursuant to Section 39.2 of the Act, for siting approval of a new pollution control facility and has been denied siting approval under Section 39.2 of the Act, may file a petition for review of the decision to deny siting. The siting applicant may also appeal conditions imposed in a decision granting siting approval.
- b) Other persons. Any person who has participated in the public hearing conducted by the unit of local government and is so located as to be affected by the proposed facility may file a petition for review of the decision to grant siting. Associations that file a petition before the Board must be represented by an attorney in accordance with 35 Ill. Adm. Code 101.400.

Section 107.202 Parties

- a) In a petition to review a local government's decision concerning a new pollution control facility, the following are parties to the proceeding:

- 1) The petitioner or petitioners are the persons described in Section 107.200 of this Part. If there is more than one petitioner, they must be referred to as co-petitioners; and
- 2) The unit(s) of local government whose decision is being reviewed must be named the respondent(s). In an appeal pursuant to Section 107.200(b), the siting applicant must also be named as a respondent.
- b) Where the interests of the public would be served, the Board or hearing officer may allow intervention by the Attorney General or the State's Attorney of the county in which the facility will be located.

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Section 107.204 Time For Filing Petition

A petition for review must be filed within 35 days after the local siting authority's action to approve or disapprove siting. Action means the local government's official written decision granting or denying local siting approval. Pursuant to Section 39.2(e) of the Act, action includes failure of the governing body to act within 180 days after receiving request for siting approval.

Section 107.206 Filing and Service Requirements

- a) Filing. The petition for review must be filed with the Clerk of the Board in accordance with the filing requirements contained in the Board's general procedural rules, found at 35 Ill. Adm. Code 101.Subpart C and Section 107.208 of this Part.
- b) Service. The petition for review must be served upon all parties in accordance with the Board's service requirements contained in the Board's general procedural rules, found at 35 Ill. Adm. Code 101.Subpart C.

Section 107.208 Petition Content Requirements

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C the petition must also include:

- a) A copy of the local siting authority's written decision or ordinance;
- b) A statement as to how the filing party is a proper petitioner under Section 107.200 of this Part; and
- c) In accordance with Section 39.2 of the Act, a specification of the grounds for the appeal, including any allegations for fundamental unfairness or any manner in which the decision as to particular criteria is against the manifest weight of the evidence.

SUBPART C: FILING OF LOCAL RECORD

Section 107.300 Record

Pursuant to Sections 39.2 and 40.1 of the Act, the siting authority must compile a complete record of its proceedings.

Section 107.302 Filing of the Record

The siting authority must file the record of its proceedings with the Board as directed by Board or hearing officer order. Failure to file the entire record on the date directed by the Board or hearing officer may subject the respondent to sanctions as may be ordered by the Board in accordance with 35 Ill. Adm. Code 101.Subpart H.

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**Section 107.304 Record Contents**

- a) The record must contain all information or evidence presented to the local siting authority or relied upon by the local siting authority during its hearing process including:
  - 1) The siting application;
  - 2) Any and all transcripts of local hearings;
  - 3) All briefs and other arguments and statements of parties and participants;
  - 4) All exhibits relied upon by the local siting authority in making its decision;
  - 5) All written public comments relevant to the local government proceeding;
  - 6) Minutes of all relevant open meetings of the siting authority;
  - 7) Notices of hearing or all relevant meetings of the siting authority;
  - 8) The written decision of the siting authority made pursuant to Section 39.2 of the Act;
  - 9) Certificate of Record as described in Section 107.308 of this Part; and
  - 10) *If, prior to making a final local siting decision, a county board or governing body of a municipality has negotiated and entered into a host agreement with the local siting applicant, the terms and conditions of the host agreement, whether written or oral, shall be disclosed and made a part of the hearing record for that local siting proceeding. In the case of an oral agreement, the disclosure shall be made in the form of a written summary jointly prepared and submitted by the county board or governing body of the municipality and the siting applicant and shall describe the terms and conditions of the oral agreement. [415 ILCS 5/39.2(e)]*
- b) The record must contain the originals or legible copies of all documents, must be arranged in chronological sequence, and must be sequentially numbered, placing the letter "C" before the number of each page.
- c) Seven copies of the transcript and 1 original and 9 copies of all other documents in the record must be filed with the Board.

**Section 107.306 Preparing of the Record**

Unless petitioner is a citizen or citizen's group, the petitioner must pay the costs of preparing and certifying the record to the Board. If the petitioner is a citizen or citizen's group, such petitioner shall be exempt from *paying the costs of preparing and certifying the record.* [415 ILCS 5/39.2(n)]

**Section 107.308 Certification of Record**

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The record filed with the Board must be certified by the county clerk, if the siting authority is a county, or the municipal clerk, if the siting authority is a municipality. The certification must be entitled "Certificate of Record on Appeal." The Certificate must contain an index that lists the documents comprising the record and shows the page number upon which they start and end. The Certificate of Record must be served on all parties.

## SUBPART D: HEARING

**Section 107.400 General**

Hearings and discovery will be conducted in accordance with the provisions set forth in the Board's general procedural rules found at 35 Ill. Adm. Code 101.Subpart F.

**Section 107.402 Authority and Duties of Hearing Officer**

The authority and duties of the hearing officer are set forth in the Board's general procedural rules found at 35 Ill. Adm. Code 101.Subpart F.

**Section 107.404 Public Participation**

Parties to the proceeding will have all rights of examination and cross-examination relevant in any judicial proceeding. Persons who are not parties as set forth in Section 107.202 of this Part are considered participants and will have such hearing participation rights as determined by the hearing officer in accordance with 35 Ill. Adm. Code 101.628. Participants may offer comment at a specifically determined time in the proceeding, but may not examine or cross-examine witnesses for either party. In accordance with this Section and 35 Ill. Adm. Code 101.628, public comment will not be considered testimony unless sworn and subject to cross-examination.

## SUBPART E: BOARD REVIEW AND DECISION

**Section 107.500 Preliminary Board Determination/Set for Hearing**

Upon proper filing of the petition, the Board will set the matter for hearing unless it determines that the matter is frivolous or duplicitious as required by Section 40.(b) of the Act.

**Section 107.502 Dismissal of Petition**

- a) The Board on its own motion or motion by any party, may dismiss any petition:
- 1) Which is untimely filed pursuant to Section 107.204 of this Part;
  - 2) Which fails to name all parties as required by Section 39.2 of the Act.



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the Act;

- 3) Which fails to include the required fee and all information as required by Section 107.206 of this Part; or
  - 4) Which fails to meet the requirements in 35 Ill. Adm. Code 101-Subpart C.
- b) Upon motion by any unit of local government that is required to prepare and certify its record alleging that any petitioner required to pay costs has failed to pay said costs, the Board may enter a dismissal or other order as allowed by Section 39.2(n) of the Act.

**Section 107.504 Decision Deadline**

In accordance with Section 40.1 of the Act only the applicant for siting may waive the decision deadline. Unless the applicant for siting waives the decision deadline in accordance with 35 Ill. Adm. Code 101.308 of the Board's general procedural rules, the Board will issue its decision within 120 days after the proper filing and service of a petition for review.

**Section 107.506 Burden of Proof/Standard of Review**

- a) The petitioner bears the burden of proof in accordance with Section 40.1(a) of the Act.
- b) The Board may reverse the siting decision of the local siting authority only:
  - 1) If the decision is against the manifest weight of the evidence presented in the local siting authority's record;
  - 2) If the proceeding of the local siting authority did not comport with general standards of fundamental fairness; or
  - 3) If the local siting authority did not have jurisdiction.
- c) Where the Board determines that the hearing of the local siting authority did not comport with general standards of fundamental fairness it may, in its discretion, remand the decision to the siting authority as an alternative to reversal. Any Board order allowing for such remand will clearly set forth the reasons for the remand order and set a time frame for the local siting authority to cure the defect upon remand.

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1) Heading of the Part: Appeals of Final Decisions of State Agencies

2) Code citation: 35 Ill. Adm. Code 105

3) Section Numbers:

Proposed Action:

105.100	New Section
105.102	New Section
105.104	New Section
105.106	New Section
105.108	New Section
105.110	New Section
105.112	New Section
105.114	New Section
105.116	New Section
105.118	New Section
105.200	New Section
105.202	New Section
105.204	New Section
105.206	New Section
105.208	New Section
105.210	New Section
105.212	New Section
105.214	New Section
105.300	New Section
105.302	New Section
105.304	New Section
105.400	New Section
105.402	New Section
105.404	New Section
105.406	New Section
105.408	New Section
105.410	New Section
105.412	New Section
105.500	New Section
105.502	New Section
105.504	New Section
105.506	New Section
105.508	New Section
105.510	New Section
105.600	New Section
105.602	New Section
105.604	New Section
105.606	New Section
105.608	New Section
105.610	New Section

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- 105.612 New Section  
105.614 New Section  
ILLUSTRATION A

- 4) Statutory authority: 415 ILCS 5/5, 26, 27, 39, 39.5, 40, 40.1, 40.2, and 57 of the Environmental Protection Act [415 ILCS 5].
- 5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules and adopt new procedural rules at Parts 101-130. Part 105 contains the Section 40 (415 ILCS 40) permit appeal rules presently contained in Part 105, and the rules for appeal of the Office of the State Fire Marshal's (OSFM's) USF decisions contained in existing Part 107. Petitions are usually filed within 35 days of an Agency or OSFM decision. The Agency's administrative record is filed, hearings are noticed and held, and decisions rendered within any statutory deadline. We have eliminated rigid requirements for the time of filing the record, allowing the hearing officer flexibility to set deadlines based on waivers filed and the likelihood of a settlement versus proceeding to hearing (Section 105.116). We have included rules to allow for 90-day extensions of time for filing some petitions for review (see Section 105.206 "Extension of Time to File a Petition for Review").

Other changes include a provision for third party appeal of National Pollutant Discharge Elimination System (NPDES) permits as legislation now specifically authorizes these appeals (see Public Act 90-274, effective July 30, 1997). Section 105.202 "Who May File A Petition for Review" as drafted in this proposal includes third party appeal rights as currently authorized by Section 40 of the Act. (415 ILCS 5/40)

Additionally, the Board has included rules governing CAAPP permit appeals. These rules appear at Subpart C, and the rules pertaining to appeals of leaking underground storage tanks (LUST) now appear in Subparts D and E.

- 6) Will these proposed rules replace emergency rules currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed rules contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of statewide policy objectives: This rulemaking imposes procedural mandates on units of local government to the extent they may appear before the Board.

## POLLUTION CONTROL BOARD

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- 11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

Clerk's Office  
Illinois Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601  
312/814-6931

Interested persons may request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620 or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

Additionally, the Board will hold two public hearings on these rules. The first hearing will be April 11, 2000 at 1:30 p.m. at:

Illinois Pollution Control Board  
Hearing Room 403  
600 S. Second Street  
Springfield, IL

The second hearing will be May 4, 2000 at 1:30 p.m. at:

James R. Thompson Center  
Room 9-040  
100 W. Randolph Street  
Chicago, IL

- 12) Initial regulatory flexibility analysis:

- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking affects those small businesses, small municipalities, and not-for-profit corporations that appear before the Board.
- B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments do not require extensive reporting, bookkeeping or other procedures.
- C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.

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13) Regulatory Agenda on which this rulemaking was summarized: January 2000

The full text of the proposed rule begins on the next page:

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## NOTICE OF PROPOSED RULES

## TITLE 35: ENVIRONMENTAL PROTECTION

## SUBTITLE A: GENERAL PROVISIONS

## CHAPTER I: POLLUTION CONTROL BOARD

## PART 105

## APPEALS OF FINAL DECISIONS OF STATE AGENCIES

## SUBPART A: GENERAL PROVISIONS

Section	
105.100	Applicability
105.102	Severability
105.104	Definitions
105.106	Computation of Time, Filing and Service Requirements
105.108	Dismissal of Petition
105.110	Hearing Process
105.112	Burden of Proof
105.114	Calculation of Decision Deadline
105.116	Record Filing
105.118	Sanctions for Untimely Filing of the Record

## SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND OTHER FINAL DECISIONS OF THE AGENCY

Section	
105.200	Applicability
105.202	Parties
105.204	Who May File a Petition for Review
105.206	Time to File the Petition on Request for Extension
105.208	Extension of Time to File a Petition for Review
105.210	Petition Content Requirements
105.212	Agency Record and Notification
105.214	Board Hearing

## SUBPART C: CAAPP PERMIT APPEALS

Section	
105.300	Applicability
105.302	General Requirements
105.304	Petition Content Requirements

## SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND STORAGE TANK (LUST) DECISIONS

Section	
105.400	Parties

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105.402 Who May File a Petition for Review  
 105.404 Time for Filing the Petition  
 105.406 Extension of Time to File a Petition for Review  
 105.408 Petition Content Requirements  
 105.410 Agency Record  
 105.412 Board Hearing

## SUBPART E: APPEAL OF OSFM LUST DECISIONS

Section  
 105.500 Applicability  
 105.502 General Overview  
 105.504 General Requirements  
 105.506 Petition Content Requirements  
 105.508 OSFM Record and Appearance  
 105.510 Location of Hearing

## SUBPART F: APPEALS OF OTHER FINAL DECISIONS OF STATE AGENCIES

Section  
 105.600 Applicability  
 105.602 Parties  
 105.604 Burden of Proof  
 105.606 Who May File a Petition for Review  
 105.608 Time to File the Petition; Service  
 105.610 Petition Content Requirements  
 105.612 State Agency Record  
 105.614 Board Hearing

## ILLUSTRATION A Agency LUST Final Decisions that are Reviewable

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) (415 ILCS 5/26 and 27) and Implementing Sections 5, 39, 39.5, 40, 40.1, 40.2, and 57 of the Act [415 ILCS 5/5, 39, 39.5, 40, 40.1, 40.2 and 57].

SOURCE: Filed with Secretary of State January 1, 1978; amended 4 Ill. Reg. 52, page 41, effective December 11, 1980; codified 6 Ill. Reg. 8357; amended in R3-24 at 18 Ill. Reg. 4244, effective March 8, 1994; amended in R94-11 at 18 Ill. Reg. 1659A, effective November 1, 1994. Old Part repealed, new Part adopted in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 105.100 Applicability

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- a) This Part applies to appeals of final decisions of State agencies to the Board as authorized by law.
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

## Section 105.102 Severability

If any provision of this Part or its application to any person is adjudged invalid, such adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

## Section 105.104 Definitions

For the purpose of this Part, words and terms will have the meaning as defined in 35 Ill. Adm. Code 101. Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

## Section 105.106 Computation of Time, Filing and Service Requirements

Unless applicable law or this Part provides otherwise, service, filing, and computation of time must be in accordance with 35 Ill. Adm. Code 101. Subpart C.

## Section 105.108 Dismissal of Petition

A petition is subject to dismissal if the Board determines that:

- a) The petition does not contain the informational requirements set forth in Section 105.210, 105.308, 105.408, 105.506 or 105.610 of this Part;
- b) The petition is untimely pursuant to Section 105.206, 105.304, 105.404, 105.504 or 105.608 of this Part;
- c) The petitioner fails to timely comply with any order issued by the Board or the hearing officer, including an order requiring additional information; or
- d) The petitioner does not have standing under applicable law to petition the Board for review of the State agency's final decision.

## Section 105.110 Hearing Process

Unless applicable law or this Part provides otherwise, proceedings held pursuant to this Part will be in accordance with the rules set forth in 35 Ill. Adm. Code 101. Subpart F.

## Section 105.112 Burden of Proof

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Unless applicable law or this Part provides otherwise:

- a) *The burden of proof shall be on the petitioner except as provided in subsection (b) of this Section.* [415 ILCS 5/40(a)(1), 40(b) and (e)(3) and 40.2(a)]
- b) *The burden of proof is on the Agency if the Agency issues an NPDES permit that imposes limits which are based upon a criterion or denies a permit based upon application of a criterion, then the Agency shall have the burden of going forward with the basis for the derivation of those limits or criterion which were derived under the Board's rules.* [415 ILCS 5/40(a)(1)]

**Section 105.114 Calculation of Decision Deadline**

The Board will render its final decision on the petition within any applicable decision period (which commences when the petition is filed in accordance with 35 Ill. Adm. Code 101.300(b)(4)), except:

- a) When the petitioner waives its right to a decision within the prescribed decision period in accordance with 35 Ill. Adm. Code 101.Subpart C; or
- b) When the petitioner files an amended petition, in which case the decision period recommences when the amended petition is filed in accordance with 35 Ill. Adm. Code 101.300(b)(4).

**Section 105.116 Record Filing**

Unless applicable law or this Part provides otherwise, the State agency must file the entire record of its decision with the Clerk as the Board or hearing officer directs and in accordance with any applicable decision deadline, but in no event later than 30 days before the date of any scheduled hearing. If the State agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed.

**Section 105.118 Sanctions for Untimely Filing of the Record**

If the State agency fails to file the record on or before the date required under this Part, the Board may sanction the State agency in accordance with 35 Ill. Adm. Code 101.Subpart H.

SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND OTHER FINAL  
DECISIONS OF THE AGENCY

**Section 105.200 Applicability**

This Subpart applies to any appeal to the Board of the Agency's final permit decisions and other final decisions of the Agency, except:

- a) When the appeal is of a final CAAPP decision of the Agency, which is

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- b) When the appeal is of a final leaking underground storage tank decision of the Agency, which is addressed in Subpart D of this Part.

**Section 105.202 Parties**

- a) *Petitioner.* The person who files a petition for review of the Agency's final decision must be named the petitioner.
- b) *Respondent(s).* The Agency must be named the respondent. If a petition is filed pursuant to Section 105.204(b), (c) or (d) by a person other than the permit applicant, the permit applicant must be named as a respondent in addition to the Agency.

**Section 105.204 Who May File a Petition for Review**

- a) *General.* If the Agency refuses to grant or grants with conditions a permit under Section 39 of the Act, the applicant may...petition for a hearing before the Board to contest the decision of the Agency. [415 ILCS 5/40(a)(1)]
- b) *National Pollutant Discharge Elimination System (NPDES) permit.* If the Agency grants or denies a permit under subsection (b) of Section 39 of the Act, a third party, other than the permit applicant or Agency, may petition the Board...for a hearing to contest the decision of the Agency. [415 ILCS 5/40(e)(1)]
- c) *Resource Conservation and Recovery Act (RCRA) Permit for a Hazardous Waste Disposal Site.* If the Agency grants a RCRA permit for a hazardous waste disposal site, a third party, other than the permit applicant or Agency, may petition the Board...for a hearing to contest the issuance of the permit. This subsection does not apply to the granting of permits issued for the disposal or utilization of sludge from publicly-owned sewage works. [415 ILCS 5/40(b)]
- d) *Hazardous Waste Permit.* Any party to an Agency proceeding conducted pursuant to Section 39.3 of this Act may petition as of right to the Board for review of the Agency's decision. [415 ILCS 5/40(c)]
- e) *EMSAS.* If the Agency terminates an EMSA under Section 52.3-4(b) of the Act, the sponsor may petition the Board for review of the Agency's final decision.
- f) *Other Agency Final Decisions.* If the Agency's final decision is to deny or to conditionally grant or approve, the person who applied for or otherwise requested the Agency decision, or the person to whom the Agency directs its final decision, may petition the Board for review of the Agency's final decision. In addition, any third party authorized by law to appeal a final decision of the Agency to the Board may file a petition for review with the Clerk.

**Section 105.206 Time to File the Petition or Request For Extension**

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- a) Except as provided in subsection (b) of this Section, if a person who may petition the Board under Section 105.204 of this Subpart wishes to appeal the Agency's final decision to the Board under this Subpart, the person must file the petition with the Clerk within 35 days after the date of service of the Agency's final decision.
- b) If a person with standing as described in Section 105.204(d) of this Subpart, or any third party who is authorized by law to appeal a final decision of the Agency to the Board, wishes to appeal the Agency's final decision to the Board under this Subpart, the person must file a petition for review with the Clerk within 35 days after the date of issuance of the Agency's final decision.
- c) Except as provided in subsection (d) of this Section, if a person who may petition the Board under Section 105.204 of this Subpart wishes to request an extension of time to file a petition for review pursuant to Section 105.208(a) of this Subpart, the person must file the request within 35 days after the date of service of the Agency's final decision.
- d) If a person with standing as described in Section 105.204(d), or any third party who is authorized by law to appeal a final decision of the Agency to the Board, wishes to request an extension of time to file a petition for review pursuant to Section 105.208(b) of this Subpart, the person must file the request within 35 days after the date of issuance of the Agency's final decision.

**Section 105.208 Extension of Time to File a Petition for Review**

- a) Permit or Other Agency Final Decision. For appeals pursuant to Section 40(a)(1) of the Act, the 35-day period described in Section 105.206(a) of this Subpart for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period. [415 ILCS 5/40(a)(1).]
- 1) The applicant and the Agency must jointly file a request for extension within 35 days after the date of service of the Agency's final decision.
- 2) The joint request described in subsection (a)(1) of this Section may seek an appeal period not exceeding 125 days from the date of service of the Agency's final decision to file a petition for review under this Subpart.
- b) Hazardous Waste Permit. For appeals pursuant to Section 40(c) of the Act, the 35-day period described in Section 105.206(b) of this Subpart for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period. If another person with standing to appeal a hazardous waste disposal permit wishes to obtain an extension, there must be a written

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notice provided to the Board by that person, the Agency, and the applicant, within the initial appeal period. [415 ILCS 5/40(c).]

- 1) If the applicant is the petitioner, the applicant and the Agency must jointly file a request for extension within 35 days after the date of issuance of the Agency's final decision.
- 2) If a person with standing other than the applicant is the petitioner, the Agency, the applicant and the other person must jointly file a request for extension within 35 days after the date of issuance of the Agency's final decision.
- 3) The joint request described in subsection (b)(1) or (2) of this Section may seek an appeal period not exceeding 125 days from the date of issuance of the Agency's final decision to file a petition for review under this Subpart.
- c) Any request for extension of time under this Section must be accompanied by written evidence that the Agency joins in the request, e.g., affidavit of the petitioner or signature of the Agency's representative.
- d) Extensions of time to file petitions under Section 105.204(b), (c), or (e) of this Subpart are not available.

**Section 105.210 Petition Content Requirements**

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C, the petition must include:

- a) The Agency's final decision or issued permit;
- b) A statement specifying the date of issuance or service of the Agency's final decision or issued permit, as applicable pursuant to Section 105.206 of this Subpart;
- c) A statement specifying the grounds of appeal; and
- d) For petitions under Section 105.204(b) of this Subpart, a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing on the NPDES permit application, if a public hearing was held, and a demonstration that the petitioner is so situated as to be affected by the permitted facility. [415 ILCS 5/40(e)(2)]

**Section 105.212 Agency Record**

- a) The Agency must file its entire record of its decision with the Clerk in accordance with Section 105.116 of this Part.
- b) The record must include:
- 1) Any permit application or other request that resulted in the Agency's final decision;
  - 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency;
  - 3) The permit denial letter that conforms to the requirements of

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Section 39(a) of the Act or the issued permit or other Agency final decision;

4) The hearing file of any hearing that may have been held before the Agency, including any transcripts and exhibits; and

5) Any other information the Agency relied upon in making its final decision.

## Section 105.214 Board Hearing

- a) Except as provided in subsections (b), (c) and (d) of this Section, the Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101.516, upon an appropriately filed petition for review under this Subpart. The hearing will be based exclusively on the record before the Agency at the time the permit or decision was issued, unless the parties agree to supplement the record pursuant to Section 40(d) of the Act.
- b) The Board will not hold a hearing on a petition for review under this Subpart if the Board disposes of the petition on a motion for summary judgment brought pursuant to 35 Ill. Adm. Code 101.516.
- c) The Board will not hold a hearing on a petition for review under Section 105.204(c) of this Subpart if the Board determines that:
  - 1) The petition is duplicitous or frivolous; or
  - 2) The petitioner is so located as to not be affected by the permitted facility.
- d) The Board will not hold a hearing on a petition for review under Section 105.204(b) or (d) of this Subpart if the Board determines that the petition is duplicitous or frivolous.
- e) If the Board determines to hold a hearing, the Clerk will give notice of the hearing pursuant to 35 Ill. Adm. Code 101.602.

## SUBPART C: CAAPP PERMIT APPEALS

## Section 105.300 Applicability

This Subpart applies to proceedings before the Board concerning appeals from CAAPP final determinations made pursuant to Section 39.5 of the Act.

## Section 105.302 General Requirements

- a) The definitions of 35 Ill. Adm. Code 101.202 and Section 39.5 of the Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise.
- b) If the Agency denies a CAAPP permit, permit modification, or permit renewal it shall provide to USEPA, the permit applicant and, upon request, affected states, any person who participated in the public comment process and any other person who could obtain judicial review

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- under Section 40.2 and 41 of the Act a copy of each notification of denial pertaining to the permit applicant.
- c) In the case of a denial of a CAAPP permit, including a permit revision or permit renewal, or a determination of incompleteness by the Agency regarding a submitted CAAPP application, or the issuance by the Agency of a CAAPP permit with one or more conditions or limitations, or the failure of the Agency to act on an application for a CAAPP permit, permit renewal, administrative permit amendment or significant permit modification within the time frames specified in Section 39.5(5)(j) or Section 39.5(13) of the Act, as applicable, or the failure of the Agency to take final action within 90 days after receipt of an application requesting minor permit modification procedures (or 180 days for modifications subject to group processing requirements) pursuant to Section 39.5(14) of the Act, to which the applicant, any person who participated in the public comment process pursuant to Section 39.5(8) of the Act, or any other person who could obtain judicial review pursuant to Section 41(a) of the Act objects, such persons may contest the decision of the Agency by filing with the Clerk a petition for review of the Agency's action in accordance with this Section.
- d) For purposes of this Subpart, a person who participated in the public comment process is someone who, during the public comment period, either commented on the draft permit, submitted written comments, or requested notice of the final action on a specific permit application. The petition filed pursuant to subsection (c) of this Section must be filed within 35 days after the Agency's final permit action. Notwithstanding the above, if the petition is based solely on grounds arising after the 35 day period expires, the petition may be filed within 35 days after the new grounds for review arise. If the applicant is challenging the Agency's failure to timely take final action pursuant to Section 39.5 of the Act, the petition must be filed before the Agency takes such final action. Under no circumstances may a petition challenging the final permit action on a Phase II acid rain permit be filed more than 90 days subsequent to such final permit action.
- f) The Agency must appear as respondent at the hearing and must file within 30 days after service of the petition, an answer consisting of the entire Agency record of the CAAPP application including the CAAPP permit application, the hearing record, the CAAPP permit denial or issuance letter, and correspondence with the applicant concerning the CAAPP permit application.
- g) The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.
- h) The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.
- i) *The Agency shall notify USEPA, in writing, of any petition for hearing*

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*brought under this Part involving a provision or denial of a Phase II acid rain permit within 30 days of the filing of the petition. USEPA may intervene as a matter of right in any such hearing. The Agency shall notify USEPA, in writing, of any determination or order in a hearing brought under this Section that interprets, voids, or otherwise relates to any portion of a Phase II acid rain permit. [415 ILCS 5/40.2(e)]*

**Section 105.304 Petition Content Requirements**

- a) The petition must include:
  - 1) a concise description of the CAAPP source for which the permit is sought;
  - 2) a statement of the Agency's decision or part thereof to be reviewed;
  - 3) a justification as to why the Agency's decision or part thereof was in error; and
  - 4) such other materials upon which the petitioner relies in its petition.
- b) The petition may include a request to stay the effectiveness of a denial of the CAAPP permit until final action is taken by the Board pursuant to Section 40.2 of the Act.

SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND  
STORAGE TANK (LUST) DECISIONS

**Section 105.400 Parties**

- a) Petitioner. The person who files a petition for review of the Agency's final decision made pursuant to Sections 57.1 et seq. of the Act must be named as petitioner.
- b) Respondent. The Agency must be named as the respondent.

**Section 105.402 Who May File a Petition for Review**

Any owner or operator may file a petition for review pursuant to Section 40 of the Act of an Agency final determination made pursuant to Sections 57.1 et seq. of the Act. There are several Agency determinations that may be appealed pursuant to Section 40 of the Act. The Agency determinations that may be appealed are included in Illustration A of this Part.

**Section 105.404 Time for Filing the Petition**

Petitions must be filed in accordance with this Section or the Board does not have the authority to review the Agency's decision and will dismiss the proceeding on its own motion or on the motion of any party. Within 35 days

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after the date of service of the Agency's final decision the petitioner may file with the Clerk of the Board:

- a) a petition for review that contains the requirements of Section 105.408 of this Part; or
- b) a request for an extension of time to file a petition for hearing pursuant to Section 105.406 of this Part.

**Section 105.406 Extension of Time to File a Petition for Review**

Pursuant to Section 40(a)(1) of the Act, the 35-day period for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period. [415 ILCS 5/40(c)] The applicant and the Agency must jointly file a request for extension with the Board within 35 days after the date of service of the Agency's final decision. Upon an appropriately filed request for an extension, the applicant has a period not exceeding 125 days after the date of service of the Agency's final decision to file a petition for review before the Board pursuant to Section 105.408 of this Part.

**Section 105.408 Petition Content Requirements**

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C the petition must contain:

- a) The Agency's final decision;
- b) A statement specifying the date of service of the Agency's final decision; and
- c) A statement specifying the grounds of appeal.

**Section 105.410 Agency Record**

- a) The entire Agency record of its decision must be filed with the Board as directed by the Board or hearing officer pursuant to Section 105.116 of this Part.
- b) The record must include:
  - 1) The plan or budget submittal or other request that requires an Agency decision;
  - 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency;
  - 3) The final determination letter; and
  - 4) Any other information the Agency relied upon in making its determination.

**Section 105.412 Board Hearing**

The Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code

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101.Subpart F upon an appropriately filed petition for review, unless a petition is disposed of by a motion for summary judgment brought pursuant to 35 Ill. Adm. Code 101.516. Such hearing will be based exclusively on the record before the Agency at the time the permit or decision was issued. [415 ILCS 5/40(d) and 5/40.2]

## SUBPART E: APPEAL OF OSPM LUST DECISIONS

## Section 105.500 Applicability

This Subpart applies to proceedings before the Board concerning appeals from OSPM final determinations made pursuant to Section 57.9(c) of the Act.

## Section 105.502 General Overview

OSPM final determinations are made either through the issuance of an "Eligibility and Deductibility Final Determination" letter or by the failure of OSPM to act upon receipt of such form within 60 days pursuant to Section 57.9(c)(2) of the Act. The process before the Board for review of final determinations by the OSPM includes, but is not limited to, the following steps. Upon receipt of a petition for review, unless the Board determines that the petition is insufficient, a hearing date and location will be assigned. Hearings will be publicly-noticed in the county where the underground storage tank site is located. Most hearings will be held in either Chicago or Springfield. If the parties enter into a settlement agreement prior to or during the hearing process, the parties may request that the Board accept and enter a final order adopting a proposed settlement agreement; such an order may be requested with or without a hearing.

## Section 105.504 General Requirements

- a) Who may file. Any owner or operator of an underground storage tank who has been issued an "Eligibility and Deductibility Final Determination" letter or who has not received an "Eligibility and Deductibility Determination" from the OSPM within the time prescribed by 415 ILCS 5/57.9(c), which is deemed to be a final decision appealable to the Board, may file a petition with the Board seeking review of that final decision. The owner/operator must be named as the petitioner, and the OSPM must be named as the respondent. Filing requirements are set forth at 35 Ill. Adm. Code 101.Subpart C.
- b) Timely Petition. The petition for review must be filed with the Board within 35 days after the date of the OSPM's "Eligibility and Deductibility Final Determination" letter or within 35 days from the OSPM's final decision due to its failure to act as required under 415 ILCS 5/57.9(c). There will be a rebuttable presumption that petitioner received the OSPM's "Eligibility and Deductibility Final

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Determination" letter four days from the date indicated on the letter. Service and filing. The petitioner must serve all filings upon the OSPM at the address listed in 35 Ill. Adm. Code 101.Subpart C. All filings must be accompanied by a notice of filing. Methods and proof of service, as well as the effective date of service, are governed by 35 Ill. Adm. Code 101.Subpart C.

## Section 105.506 Petition Content Requirements

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C the petition must include:

- a) A copy of the OSPM's "Eligibility and Deductibility Final Determination" letter;
- b) A complete and precise description of the underground storage tank site, including the location of the site, including the county, the number of underground storage tanks on-site, the substance(s) stored in each tank, the date of the tank(s) registration; and the date of Illinois Emergency Management Agency notification;
- c) A statement specifying the date of service of the OSPM's final determination letter and documentation to demonstrate the petitioner's timely filing;
- d) A statement specifying the grounds of appeal;
- e) If the owner or operator is represented by counsel, an appearance must be filed in conjunction with the petition; and
- f) A request to hold the hearing at a specified location other than Springfield or Chicago, specifying the reasons for that request. A hearing will be held in an alternate location only to prevent material prejudice or undue delay.

## Section 105.508 OSPM Record and Appearance

- a) Within 14 days after a petition for review of an OSPM eligibility or deductibility determination, the attorney representing the OSPM must file an appearance with the Board.
- b) The entire OSPM record of its decision must be filed with the Board as directed by the Board or hearing officer. The record must include:
  - 1) The request for OSPM determination of eligibility or deductibility;
  - 2) Correspondence with the petitioner;
  - 3) The denial letter; and
  - 4) Any other information the OSPM relied upon in making its determination.

## Section 105.510 Location of Hearing

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The hearing will be held in either Springfield or Chicago or in such other location as the hearing officer or the Board may designate to prevent material prejudice or undue delay. Upon the proceeding being set for hearing, the Clerk will cause notice of the hearing to be published. Public notice will be published at least 21 days before the hearing by public advertisement in a newspaper of general circulation in the county in which the UST site in question is located.

## SUBPART F: APPEALS OF OTHER FINAL DECISIONS OF STATE AGENCIES

## Section 105.600 Applicability

This Subpart applies to any appeal of a State agency's final decision to the Board when:

- a) The appeal is authorized by law; and
- b) The appeal is not otherwise addressed in this Part.

## Section 105.602 Parties

- a) Petitioner. The person who files a petition for review of the State agency's final decision must be named the petitioner.
- b) Respondent(s). The State agency must be named the respondent. If the law authorizing the appeal allows third-party appeals to the Board and such a petition is filed with the Clerk in accordance with this Subpart, the person who applied for or otherwise requested the State agency's final decision, or the person to whom the State agency directs its final decision must be named as a respondent in addition to the State agency.

## Section 105.604 Burden of Proof

The burden of proof is as prescribed by the law authorizing the appeal. If that law does not address the burden of proof, the petitioner has the burden of proof.

## Section 105.606 Who May File a Petition for Review

Any person authorized by law to appeal a State agency's final decision to the Board may file with the Clerk a petition for review of the State agency's final decision.

## Section 105.608 Time to File the Petition; Service

- a) Time to File. If a person who may petition the Board under Section 105.606 of this Subpart wishes to appeal a State agency's final decision to the Board under this Subpart, the person must file the

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petition with the Clerk within the time prescribed by the law authorizing the appeal. If that law does not address the time within which the person must file the petition for review, the petition must be filed:

- 1) within 35 days after the date of service of the State agency's final decision if the petitioner is the person who applied for or otherwise requested the State agency's final decision, or the person to whom the State agency directs its final decision; or
  - 2) within 35 days after the date of issuance of the State agency's final decision if the petitioner is a third party.
- b) Service. In addition to any service requirements in the law authorizing the appeal, the petitioner must serve a copy of the petition on all parties to the proceeding in accordance with Section 105.106 of this Part.

## Section 105.610 Petition Content Requirements

In addition to any information or materials that the law authorizing the appeal may require to be included in the petition, the petition must include:

- a) The State agency's final decision;
- b) A statement specifying the date of issuance or service of the State agency's final decision, as applicable pursuant to Section 105.608(a) of this Subpart;
- c) A statement specifying the grounds of appeal; and
- d) Any filing fee prescribed by the law authorizing the appeal.

## Section 105.612 State Agency Record

- a) Time to File. The State agency must file with the Clerk the entire agency record of its decision within the time prescribed by the law authorizing the appeal. If that law does not address the time within which the State agency must file the record, the State agency must file the record in accordance with Section 105.116 of this Part.
- b) Contents. In addition to any information or materials that the law authorizing the appeal may require to be included in the State agency's record of its decision, the record must include:

- 1) Any application or other request that resulted in the State agency's final decision;
- 2) Correspondence with the petitioner and any documents or materials that the petitioner submitted to the State agency;
- 3) The State agency's final decision;
- 4) The hearing file of any hearing that may have been held before the State agency, including any transcripts and exhibits; and
- 5) Any other information that the State agency relied upon in making its final decision.

- c) Service. In addition to any service requirements in the law



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authorizing the appeal, the State Agency must serve a copy of the record on all parties to the proceeding in accordance with Section 105.106 of this Part.

**Section 105.614 Board Hearing**

- a) The Board will conduct a public hearing as prescribed by the law authorizing the appeal. If that law does not address the conduct of a public hearing, the Board will conduct a public hearing in accordance with 35 Ill. Adm. Code 101. Subpart F.
- b) The basis of a public hearing will be as prescribed in the law authorizing the appeal. If that law does not address the basis for a public hearing, the hearing will be based exclusively on the record before the State agency at the time it issued the final decision.
- c) The Clerk will give notice of the hearing as prescribed in the law authorizing the appeal. If that law does not address the notice of a public hearing, the Clerk will give notice of the hearing pursuant to 35 Ill. Adm. Code 101.602.

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**Section 105. ILLUSTRATION A Agency MUST Final Decisions that are Reviewable**

The following table includes Agency final determinations which may be appealed to the Board pursuant to the Leaking Underground Storage Tank Program, Title XVI of the Act. Appealable determinations are listed in Title XVI, so the reader should consult the Act for amendments to Title XVI which may affect this list.

Description of Final Determination	Section of the Act	35 Ill. Adm. Code Citation
Agency's determination concerning the owner's or operator's physical soil classification and groundwater investigation plan.	57.7(a)(1)(A)	732.305(a) and (c) and 732.503(b) and (f)
Agency's determination as to a request for reimbursement for costs associated with early action pursuant to Section 57.6(b) of the Act.	57.7(a)(1)(B)	732.305(b)(1) and (c) and 732.602
Agency's determination concerning the owner's or operator's budget for the physical soil classification and groundwater investigation plan.	57.7(a)(2)	732.305(b)(2) and (c) and 732.503 (b) and (f)
Agency's determination concerning the site classification.	57.7(b)	732.309, 732.500(a) and 732.503(b) and (f)
Agency's determination concerning the corrective action plan submitted for a high priority site.	57.7(c)(1)(A)	732.405(a) and 732.503(b) and (f)
Agency's determination concerning the budget associated with a corrective action plan submitted for a high priority site.	57.7(c)(1)(B)	732.405(b) and 732.503(b) and (f)
Agency's determination as to issuance of a no further remediation letter in accordance with Section 57.10 of the Act for a high priority site.	57.7(c)(1)(E)	732.410(a) and (d)

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Agency's determination concerning the groundwater monitoring plan and associated budget submitted for a low priority site.

57.7(c)(2)(B) 732.403(b) and (c) and 732.503(b) and (f)

Agency's determination associated with a groundwater monitoring completion report.

57.7(c)(2)(C) 732.403(g)

Agency's determination as to issuance of a no further remediation letter in accordance with Section 57.10 of the Act for a low priority site.

57.7(c)(2)(E) 732.403(f) and 732.410(d)

Agency's determination as to site classification for a no further action site.

57.7(c)(3)(B) 732.402 and 732.410(d)

Agency's determination as to amount of reimbursement.

57.8(l) 732.602(h)

Agency's determination concerning the completeness of plan or budget submittals by the owner or operator.

732.502(b), 732.503(f)

Agency's determination concerning the completeness of reimbursement submittals by the owner or operator.

732.602(a) and (b)

(Board Note: The above list was complete at time of adoption. However, the list is subject to subsequent changes in the Act, the Board's regulations and the interpretation of the corresponding law. By no means should this list be interpreted to limit any right to appeal an Agency final determination before the Board. The list should only be used as an aid for interpreting Title XVI and the corresponding law.)

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- 1) Heading of the Part: Permits
- 2) Code citation: 35 Ill. Adm. Code 105
- 3) Section Numbers: Proposed Action:  
105.101 Repeal  
105.102 Repeal  
105.103 Repeal  
105.104 Repeal  
Appendix A Repeal
- 4) Statutory authority: 415 ILCS 5/5, 26, 27, 39, 39.5, 40, 40.1, and 40.2 of the Environmental Protection Act [415 ILCS 5/5, 26, 27, 39.5, 40, 40.1, 40.2].

5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules, and adopt new procedural rules at Parts 101-106, Part 125 and Part 130.

6) Will these proposed rules replace emergency rules currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed rules contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of statewide policy objectives: While this proposed repealer does not impose a State mandate, the proposed new Part 105 imposes procedural mandates on units of local government to the extent they may appear before the Board.

11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

Clerk's Office  
Illinois Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601  
312/814-6931

Request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620 or download from the Board's Web site at

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www.ipcb.state.il.us.

## 12) Initial regulatory flexibility analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: January 2000

The full text of the proposed repealer begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER 1: POLLUTION CONTROL BOARD

PART 105  
PERMITS (REPEALED)

Section  
105.101 Setting Standards  
105.102 Permit Appeals  
105.103 Permit Review  
105.104 Cost of Review

## APPENDIX A Old Rule Numbers Referenced

**AUTHORITY:** Authorized by Sections 26 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 1026) (415 ILCS 5/26) and implementing Sections 5, 39, 39.5 40, 40.1 and 40.2 of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 1005, 1039, 1040, 1040.1 and 1040.2) (P.A. 87-1213, effective September 26, 1982, and P.A. 88-464, effective August 20, 1993) (415 ILCS 5/5, 39, 39.5, 40, 40.1, and 40.2).

**SOURCE:** Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 52, P. 41, effective December 11, 1980; codified at 6 Ill. Reg. 6357; amended at 18 Ill. Reg. 4244, effective March 8, 1994; Part repealed in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 105.101 Setting Standards

The Board shall prescribe standards for the issuance of permits in accordance with the procedures set forth in Part 102. Unless the contrary is clearly indicated, all references to "Parts" or "Sections" are to Illinois Administrative Code, Title 35: Environmental Protection. For example, "Part 309" is 35 Ill. Adm. Code 309 and "Section 309.101" is 35 Ill. Adm. Code 309.101.

## Section 105.102 Permit Appeals

- a) Permit appeals other than NPDES (National Pollutant Discharge Elimination System) and CAHFP (Clean Air Act Permit Program) permit appeals:
- 1) If the Agency denies the permit, it shall advise the permit applicant in writing in accordance with the requirements of Section 39(a) of the Environmental Protection Act (Act).
  - 2) In the case of a denial of a permit or issuance by the Agency of a permit with one or more conditions or limitations to which an applicant objects, an applicant who seeks to appeal the Agency

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decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the Agency's final decision. The petition shall include:

- A) Citation of the particular standards under which a permit is sought;
  - B) A complete and precise description of the facility, equipment, vehicle, vessel, or aircraft for which a permit is sought, including its location;
  - C) A complete description of contaminant emissions and of proposed methods for their control; and
  - D) Such other materials as may be necessary to demonstrate that the activity for which the permit is sought will not cause a violation of the Act or the regulations.
- 3) The method of filing service shall be in accordance with Sections 103.122 and 103.123.
- 4) The Agency shall appear as respondent in the hearing and shall, within 14 days, upon notice of the petition, file with the Board the entire Agency record of the permit application, including:
- A) The application;
  - B) Correspondence with the applicant; and
  - C) The denial.
- 5) The Clerk shall give notice of the petition and hearing in accordance with Part 103.
- 6) The proceedings shall be in accordance with the rules set forth in Part 103.

## b) NPDES Permit Appeals:

- 1) If the Agency denies an NPDES Permit, it shall advise the permit applicant in writing in accordance with the requirements of section 39(a) of the Act.
- 2) In the case of the denial of an NPDES Permit or the issuance by the Agency of an NPDES Permit with one or more conditions or limitations to which the applicant objects, the applicant may contest the decision of the Agency by filing with the Clerk of the Board a petition for review of the Agency's action in accordance with this Section.
- 3) Any person other than the applicant who has been a party to or participant at an Agency hearing with respect to the issuance or denial of an NPDES Permit by the Agency, or any person who requested such a hearing in accordance with applicable rules, may contest the final decision of the Agency by filing with the Clerk a petition for review of the Agency's action.
- 4) The petition shall be filed and notice issued within 30 days from the date the Agency's final decision has been mailed to the applicant and all other persons who have right of appeal. The method of filing and service shall be in accordance with sections 103.122 and 103.123.

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- 5) The Agency shall appear as respondent and shall file an answer consisting of the hearing file of any hearing which may have been held before the Agency, including any exhibits, and the following documents: NPDES Permit application, NPDES Permit denial or issuance letter, and all correspondence with the applicant concerning the application.
- 6) All parties other than the petitioner who were parties to or participants at any Agency hearing shall be made respondents.
- 7) The petition shall contain a statement of the decision or part thereof to be reviewed. The Board upon motion of any respondent shall, or upon its own motion may, require of the petitioner a specification of the errors upon which the petitioner relies in his petition.
- 8) The hearings before the Board shall extend to all questions of law and fact presented by the entire record. The Agency's findings and conclusions on questions of fact shall be prima facie true and correct. If the Agency's conclusions of fact are disputed by the party or if issues of fact are raised in the review proceeding, the Board may make its own determination of fact based on the record. If any party desires to introduce evidence before the Board with respect to any disputed issue of fact, the Board shall conduct a de novo hearing and receive evidence with respect to such issue of fact.
- 9) This proceeding shall be in accordance with Part 103.
- 10) The order of the Board entered pursuant to hearing may affirm or reverse the decision of the Agency, in whole or in part, may remand the proceeding to the Agency for the taking of further evidence, or may direct the issuance of the permit in such form as it deems just, based upon the law and the evidence.

## c) CAAMP Permit Appeals:

- 1) The definitions of 35 Ill. Adm. Code 101.101 and Section 39.5 of the Environmental Protection Act (P.A. 87-1213, effective September 26, 1992) (415 ILCS 5/39.5) ("Act") shall apply to this subsection.
- 2) If the Agency denies a CAAMP permit, permit modification or permit renewal, it shall provide to USEPA, the permit applicant and, upon request, affected states, any person who participated in the public comment process, and any other person who could obtain judicial review under Sections 40.2 and 41 of the Act a copy of each notification of denial pertaining to the permit applicant.
- 3) In the case of a denial of a CAAMP permit, including a permit revision or permit renewal, or a determination of incompleteness by the Agency regarding a submitted CAAMP application, or the issuance by the Agency of a CAAMP permit with one or more conditions or limitations, or the failure of the Agency to act on

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an application for a CAAPP permit, permit renewal, administrative permit amendment or significant permit modification within the time frames specified in Section 39.5(5)(j) or (13) of the Act, as applicable, or the failure of the Agency to take final action within 90 days after receipt of an application requesting minor permit modification proceedings (or 180 days for modifications subject to group processing requirements) pursuant to Section 39.5(14) of the Act, to which the applicant, any person who participated in the public comment process pursuant to Section 39.5(8) of the Act, or any other person who could obtain judicial review pursuant to Section 41(a) of the Act objects, such persons may contest the decision of the Agency by filing with the Clerk of the Board a petition for review of the Agency's action in accordance with this Section.

4) For purposes of this subsection, a person who participated in the public comment process is someone who, during the public comment period, either commented on the draft permit, submitted written comments or requested notice of the final action on a specific permit application.

5) The petition filed pursuant to subsection (c)(3) above shall be filed within 35 days after the Agency's final permit action. Notwithstanding the above, if the petition is based solely on grounds arising after the 35-day period expires, the petition may be filed within 35 days after the new grounds for review arise. If the applicant is challenging the Agency's failure to timely take final action pursuant to Section 39.5 of the Act, the petition shall be filed before the Agency takes such final action. Under no circumstances, however, may a petition challenging the final permit action on a Phase II acid rain permit be filed more than 90 days subsequent to such final permit action.

6) The petition shall include:

- A) A concise description of the CAAPP source for which the permit is sought;
- B) A statement of the Agency's decision or part thereof to be reviewed;
- C) A justification as to why the Agency's decision or part thereof was in error; and
- D) Such other materials upon which the petitioner relies in its petition.

7) The Agency shall appear as respondent at the hearing and shall file, within 30 days after service of the petition, an answer consisting of the entire Agency record of the CAAPP application including the CAAPP permit application, the hearing record, the CAAPP permit denial or issuance letter and correspondence with the applicant concerning the CAAPP permit application.

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8) The Clerk shall give notice of the petition and hearing in accordance with Part 103.

9) The proceeding shall be conducted in accordance with Part 103.

10) The Agency shall notify USEPA, in writing, of any petition brought under this subsection involving a provision or denial of a Phase II acid rain permit within 30 days after the filing of the petition. USEPA may intervene as a matter of right in any such hearing. The Agency shall notify USEPA, in writing, of any determination or order in a hearing brought under this subsection that interprets, voids, or otherwise relates to any portion of a Phase II acid rain permit. (Section 40.2(e) of the Act (P.A. 88-464, effective August 20, 1993).)

## Section 105.103 Permit Review

a) Permit Review for Hazardous Waste Disposal Sites:

1) Any person other than the applicant or the Agency may petition the Board for a hearing to contest the issuance of a permit for a hazardous waste disposal site. The petition shall be filed within 35 days of the date of mailing of the Agency's final decision to the applicant. The Agency and the applicant shall be named co-respondents. The Board shall conduct a public hearing, in accordance with Section 105.102 and Part 103 hereof, unless it determines that:

A) The petition is duplicitous or frivolous;

B) The petitioner is so located as not to be affected by the permitted facility; or

C) The permit was granted for the disposal or utilization of sludge from publicly owned sewage works.

2) The hearing shall be based exclusively on the record before the Agency at the time the permit was issued. The burden of proving that the Agency's action was in violation of the Act or applicable Board regulations shall be upon the petitioner.

b) NPDES Permit Review:

Any person may file a complaint, whether or not a party to or participant to any earlier proceeding before the Agency, or for modification, suspension, or revocation of an NPDES Permit in accordance with 35 Ill. Adm. Code 309.182. Such a complaint shall be commenced in accordance with Section 103.122. Part 103 shall govern the proceeding.

## Section 105.104 Cost of Review

In any proceeding brought pursuant to this Part, including an NPDES Permit review, the petitioner shall pay all costs of review except that he shall not be required to reimburse the Agency for expenses incurred in the preparation of the proceeding.

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the record or otherwise, and shall furnish the Board within 14 days following the completion of said hearing, at petitioner's cost, seven copies of a complete stenographic transcript of the proceedings of the hearing. Upon petition and good cause shown, the Board may assume all or any part of the costs of said review or transcript or may allocate the costs among the parties as it deems equitable. Any delay in the filing of the transcript shall constitute a waiver of the right to decision within 90 days under Section 40 of the Act, where applicable, for the period of the delay.

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**Section 105.APPENDIX A Old Rule Numbers Referenced**

The following table is provided to aid in referencing old Board rule numbers to section numbers pursuant to codification.

Chapter 1: Procedural Rules	35 Ill. Adm. Code Parts 101-107
Part VI: Permits	Part 105: Permits
Rule 501	Section 105.101
Rule 502	Section 105.102
Rule 503	Section 105.103
Rule 504	Section 105.104

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- 1) Heading of the Part: Regulatory and Informational Hearings and Proceedings
- 2) Code citation: 35 Ill. Adm. Code 102
- 3) Section Numbers: Proposed Action:
- |         |        |
|---------|--------|
| 102.100 | Repeal |
| 102.101 | Repeal |
| 102.102 | Repeal |
| 102.103 | Repeal |
| 102.104 | Repeal |
| 102.120 | Repeal |
| 102.121 | Repeal |
| 102.122 | Repeal |
| 102.123 | Repeal |
| 102.140 | Repeal |
| 102.141 | Repeal |
| 102.142 | Repeal |
| 102.160 | Repeal |
| 102.161 | Repeal |
| 102.162 | Repeal |
| 102.163 | Repeal |
| 102.180 | Repeal |
| 102.181 | Repeal |
| 102.182 | Repeal |
| 102.183 | Repeal |
| 102.200 | Repeal |
| 102.201 | Repeal |
| 102.202 | Repeal |
| 102.220 | Repeal |
| 102.221 | Repeal |
| 102.222 | Repeal |
| 102.240 | Repeal |
| 102.241 | Repeal |
| 102.242 | Repeal |
| 102.260 | Repeal |
| 102.261 | Repeal |
| 102.262 | Repeal |
| 102.280 | Repeal |
| 102.281 | Repeal |
| 102.282 | Repeal |
| 102.283 | Repeal |
| 102.284 | Repeal |
| 102.285 | Repeal |
| 102.300 | Repeal |
| 102.301 | Repeal |

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- 102.320 Repeal
- 102.340 Repeal
- 102.341 Repeal
- 102.342 Repeal
- 102.343 Repeal
- 102.344 Repeal
- 102.345 Repeal
- 102.346 Repeal
- 102.347 Repeal
- 102.348 Repeal
- 102.360 Repeal
- 102.361 Repeal
- 102.362 Repeal
- 102.363 Repeal
- 4) Statutory authority: 415 ILCS 5/5, 7.2, 13(c), 17-5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, and 41 of the Environmental Protection Act (415 ILCS 5/5, 7.2, 13(c), 17-5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, and 41)].
- 5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules and adopt new procedural rules at Parts 101-108, Part 125 and Part 130.
- 6) Will these proposed repealers replace emergency rules currently in effect?  
No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed repealers contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of statewide policy objectives: While this proposed repealer does not impose a State mandate, the proposed new Part 102 imposes procedural mandates on units of local government to the extent they may appear before the Board.
- 11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

Clerk's Office  
Illinois Pollution Control Board

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100 W. Randolph St., Suite 11-500  
Chicago, IL 60601  
Phone: 312/814-6931

Request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620 or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

12) Initial regulatory flexibility analysis:

- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: January 2000

The full text of the proposed repealer begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

PART 102  
REGULATORY AND INFORMATIONAL  
HEARINGS AND PROCEEDINGS [REPEALED]

## SUBPART A: GENERAL PROVISIONS

Section	Applicability
102.100	Definitions
102.101	Types of Regulatory Proposals
102.102	Waiver Of Requirements
102.103	Other Proceedings
102.104	

## SUBPART B: REGULATIONS OF GENERAL APPLICABILITY

Section	Proposal
102.120	Contents
102.121	Dismissal
102.122	Proposal Of RCRA Amendments
102.123	

## SUBPART C: SITE-SPECIFIC REGULATIONS

Section	Proposal
102.140	Contents
102.141	Dismissal
102.142	

## SUBPART D: AUTHORIZATION, SCHEDULING, AND NOTICE OF HEARINGS

Section	Authorization Of Hearing
102.160	Scheduling of Hearings
102.161	Notice of Hearing
102.162	Notice Of Site-Specific RCRA Proposals
102.163	

## SUBPART E: ECONOMIC IMPACT STUDY DETERMINATIONS

Section	Board Determination
102.180	Request For Determination
102.181	

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102.182 Basis For Board Determination  
102.183 Notice Of Board Determination

## SUBPART F: CERTIFICATION OF REQUIRED RULES

Section  
102.200 Agency Certification  
102.201 Challenge To Agency Certification  
102.202 Board Determination

## SUBPART G: AUTHORITY OF HEARING OFFICER

Section  
102.220 Authority Of Hearing Officer  
102.221 Notice And Service Lists  
102.222 Effect Of Hearing Officer Ruling

## SUBPART H: PRE-HEARING CONFERENCES

Section  
102.240 Initiation And Scheduling  
102.241 Purpose  
102.242 Pre-Hearing Order

## SUBPART I: MOTIONS AND DISCOVERY

Section  
102.260 Motion Practice  
102.261 Production Of Information  
102.262 Subpoenas

## SUBPART J: REGULATORY HEARINGS

Section  
102.280 Pre-hearing Submission Of Testimony and Exhibits  
102.281 Transcript  
102.282 Admissible Information  
102.283 Presentation Of Testimony  
102.284 Questioning Of Witnesses  
102.285 Record For Decision

## SUBPART K: ECONOMIC IMPACT HEARINGS

Section  
102.300 Hearings On The Economic Impact Study Of New Proposals  
102.301 Hearings On The Economic Impact Study Of Existing Regulations

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## SUBPART L: PUBLIC COMMENTS

Section  
102.320 Public Comments

## SUBPART M: BOARD ACTION

Section  
102.340 Revision Of Proposed Regulations  
102.341 Adoption Of Regulations  
102.342 First Notice Of Proposed Regulations  
102.343 Second Notice Of Proposed Regulations  
102.344 Notice Of Board Final Action  
102.345 Adoption Of Identical In Substance Regulation  
102.346 Adoption Of Emergency Regulations  
102.347 Adoption Of Peremptory Regulations  
102.348 Adoption Of Temporary Regulations

## SUBPART N: MOTION FOR RECONSIDERATION AND APPEAL

Section  
102.360 Filing Of Motion For Reconsideration  
102.361 Disposition Of Motions For Reconsideration  
102.362 Correction Of Publication Errors  
102.363 Appeal

AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, and 41 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1005, 1007.2, 1013(c), 1013.3, 1017.5, 1022.4(a), 1022.4(d), 1022.7(a), 1027, 1028, 1028.2, 1029, and 1041) and Section 4 of "AN ACT in relation to natural resources, research, data collection and environmental studies" (Ill. Rev. Stat. 1989, ch. 96 1/2, par. 7404) and authorized by Section 26 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1026).

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB 43, October 8, 1970; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1396, effective January 16, 1985; Part repealed, new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16 at 14 Ill. Reg. 20472, effective December 11, 1990; Part repealed in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 102.100 Applicability

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This Part applies to all regulatory and informational hearings and proceedings, and shall be read in conjunction with 35 Ill. Adm. Code 101. Hearings conducted pursuant to this part shall be quasi-legislative in nature. All testimony shall be sworn. All persons taking part in these hearings are participants, rather than parties as in contested cases.

## Section 102.101 Definitions

"Act" means the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1001 et seq.).

"Agency" means the Illinois Environmental Protection Agency.

"APA" means the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1001 et seq.).

"Attorney General" means the Office of the Attorney General of the State of Illinois.

"Board" means the Illinois Pollution Control Board.

"Chairman" means the Chairman of the Board.

"Clerk" means the Clerk of the Board.

"Document" means pleading, notice, motion, affidavit, memorandum, brief, petition, or other paper required or permitted to be filed.

"DNS" means the Illinois Department of Nuclear Safety.

"Economic impact study" means the economic impact study performed by ENR pursuant to Board determination under Section 27 of the Act.

"ENR" means the Illinois Department of Energy and Natural Resources.

"Fire Marshal" means the Office of the State Fire Marshal.

"Identical in substance regulations" means state regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if the United States Environmental Protection Agency administered the subject program in Illinois. (Section 7.2 of the Act.)

"Identical in substance rulemakings" are those proceedings conducted pursuant to specific authorization of the Act, including but not

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limited to Sections 13(c), 13.3, 17.5, 22.4(a), 22.4(d) and 22.7(d).

"JCARs" means the Joint Committee on Administrative Rules.

"Material" means relating to any substantive issue that is of consequence to the determination of a proceeding.

"Participant" means any person, not including the Board or its staff but including the proponent, who takes part in a regulatory or other quasi-legislative proceedings before the Board. A person becomes a participant in any of several ways, including, but not limited to, filing a comment, being added to the notice list of a particular proceeding or testifying at hearing.

"Peremptory rulemaking" means any rulemaking which is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions which preclude compliance with the general rulemaking requirements of Section 5.01 of the APA and which preclude the exercise by the board as to the content of the rule. (Section 5.03 of the APA.)

"Person" means any entity defined in Section 3.26 of the Act, including but not limited to any individual, partnership, company, corporation, political subdivision, or state agency.

"Proponent" means any person, not including the Board or its staff, who submits a regulatory proposal to the Board for the adoption, amendment, or repeal of a regulation.

"Quasi-legislative proceeding" means any hearing or receipt of information on any subject the Board is authorized to regulate, i.e., public information or inquiry hearings, rulemaking hearings.

"RCRA" means the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.).

"RCRA rules" means 35 Ill. Adm. Code 702, 703, 720, 721, 722, 723, 724, 725, 726, and 728.

"Relevant" means having any tendency to make the existence of any act that is of consequence to the determination of the proceeding more probable or less probable that it would be without the information.

"Required rule" means a rule that is needed to fulfill the requirements of the Federal Clean Water Act (33 U.S.C. 1251 et seq.), Safe Drinking Water Act, (42 U.S.C. 300f et seq.), Clean Air Act (42



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*U.S.C. 7401 et seq.*, or *Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) other than a rule to be adopted under Section 13(c), 13.3, 17.5, 22.4(a), 22.4(d), or 22.7 of the Act.* (Section 28.2 of the Act.)

"Site-specific regulations" means a proposed or adopted regulation specific to individual persons or sites. (Section 27(a) of the Act.)

"Undue delay" means delay which is unwarranted, unjustified, or improper.

"USEPA" means the United States Environmental Protection Agency.

### Section 102.102 Types of Regulatory Proposals

- a) The Act provides for three types of regulatory proposals:
  - 1) Identical in substance rulemakings, as defined in Section 102.101;
  - 2) Federally required rules, as defined in Section 102.101; and
  - 3) Other regulatory proposals, both of general applicability and not of general applicability.
- b) Regulations arising from these types of proposals may be adopted through four types of rulemaking:
  - 1) General rulemaking pursuant to Section 5.01 of the APA and Sections 26 and 27 of the Act;
  - 2) Emergency rulemaking pursuant to Section 5.02 of the APA (Ill. Rev. Stat. 1987, ch. 127, par. 1005.02) and Section 27 of the Act;
  - 3) Temporary rulemaking pursuant to Section 5.03 of the APA; and
  - 4) Temporary rulemaking pursuant to Section 27(b) of the Act.
- c) The provisions of Subpart B of this Part apply to all types of regulatory proposals except identical in substance proposals.

### Section 102.103 Waiver Of Requirements

The Board may waive any of the non-statutory requirements of this Part upon a showing by a person that a particular requirement would create an undue burden on that person i.e., the burden of compliance imposes financial costs that would preclude further participation, compliance would result in provision of information already provided in that proceeding.

### Section 102.104 Other Proceedings

The Board may conduct such other noncontested or informational hearings as may be necessary to accomplish the purposes of the Act. Such hearings may include, but are not limited to, inquiry hearings to gather information on any subject

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the Board is authorized to regulate.

### SUBPART B: REGULATIONS OF GENERAL APPLICABILITY

#### Section 102.120 Proposal

Any person may submit a regulatory proposal for the adoption, amendment, or repeal of a regulation. The original and nine (9) copies of each proposal shall be filed with the Clerk and one copy each with the Attorney General, the Agency and ENR.

#### Section 102.121 Contents

Each proponent shall provide:

- a) The language of the proposed regulation or amendment, including an identification of the existing regulatory language proposed to be amended or deleted. Language being added shall be indicated by underscoring and language being deleted shall be indicated by strike-outs. The proposed rule shall be drafted in accordance with 1 Ill. Adm. Code 100. Subpart C;
- b) A statement of the reasons supporting the proposal, including a statement of the facts which support the proposal, and a statement of the purpose and effect of the proposal. The statement shall discuss the applicable factors listed in Section 27(a) of the Act. The statement of reasons shall include a technical and economic justification for the proposal;
- c) Pursuant to Section 27 of the Act, a recommendation of whether an economic impact study is advisable. The recommendation shall describe, to the extent reasonably practicable, the universe of affected sources and facilities and the economic impact of the proposed rule. The recommendation shall also address the questions contained in the Analysis of Economic and Budgetary Effects of Proposed Rulemaking, set forth at 1 Ill. Adm. Code 220. Exhibit B, and identify issues to be addressed by any economic impact study;
- d) A synopsis of all testimony to be presented by the proponent at hearing;
- e) If the Agency is the proponent, and if the Agency believes that the proposed rule is a required rule pursuant to Section 28.2 of the Act, citation to the specific section of the specific federal act;
- f) Copies of any material to be incorporated by reference within the proposed regulation pursuant to Section 6.02 of the APA;
- g) Proof of service upon all persons required to be served pursuant to Section 102.120;
- h) Unless the proponent is the Agency, ENR, or DNS, a petition signed by at least 200 persons, pursuant to Section 28 of the Act and Section 102.160(a); and

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- i) Where any information required by this Subpart is inapplicable or unavailable, a complete justification for such inapplicability or unavailability.

**Section 102.122 Dismissal**

- a) Failure of the proponent to satisfy the content requirements of Section 102.121 or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.
- b) Failure of the proponent to pursue disposition of the proposal in a timely manner will render a proposal subject to dismissal. In making this determination, the Board shall consider factors including, but not limited to, the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.
- c) Any person may file a motion challenging the sufficiency of a proposal pursuant to 35 Ill. Adm. Code 101.243.
- d) A proposal shall be dismissed for inadequacy in cases in which the Board, after evaluating the proposal, cannot determine the jurisdictional basis on which the proposal is made. In all such cases, a statement informing the proponent of the Board's basis for dismissal shall be made. Dismissal of a proposal shall not bar a proponent from re-submitting a proposal in the absence of any deadline imposed by the Act or Board regulations.

**Section 102.123 Proposal of RCRA Amendments**

In addition to satisfying the requirements of Section 102.121, any proposal to amend the RCRA regulations shall:

- a) Indicate whether it is made pursuant to the provisions of Section 22.4(a), 22.4(b) or 22.4(c) of the Act;
- b) Include a listing of all amendments to the corresponding federal regulations since the period encompassed by the last amendment of the Board's RCRA rules; and
- c) Include a certificate of service indicating that a copy of the proposal has been served on the United States Environmental Protection Agency (USEPA). Service shall be made at the following address:

Director, Waste Management Division  
USEPA, Region V  
230 South Dearborn Street  
Chicago, Illinois 60604

SUBPART C: SITE-SPECIFIC REGULATIONS

**Section 102.140 Proposal**

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Any person may submit a written proposal for the adoption, amendment or repeal of a substantive site-specific regulation. The original and nine (9) copies of each proposal shall be filed with the Clerk and one copy each served upon the Agency, ENR, and the Attorney General.

**Section 102.141 Contents**

- a) The proponent shall identify the regulations which are to be addressed by the proposed amendment and the language to be added, deleted, or repealed. Language being added shall be indicated by underscoring and language being deleted shall be indicated by strike-outs. If the proposed site-specific rule seeks an exemption from or modification of a rule of general applicability, the proposed site-specific rule may not be proposed as an amendment to the general rule. Instead, the site-specific rule must be proposed as its own section.
- b) The proponent shall provide a statement of reasons and facts supporting the proposal, and a statement of the purpose and effect of the proposal.
- c) The proposal shall also comply with all requirements set forth in Section 102.121.
- d) In the event that the proposed rule would replace the applicability of a general rule to the pollution source, the proposal shall specify, with supporting documentation, the reasons why the general rule is not technically feasible or economically reasonable for the person or site. Such documentation shall include relevant information on other similar persons' or sites' ability to comply with the general rule.
- e) The proposal shall describe the person or site for which regulatory change is sought and the area affected by the proposed change. The proposal shall also include a detailed assessment of the environmental impact of the proposed change, and include a description of all available treatment or control options.
- f) The proposal shall demonstrate that the Board may grant the requested relief consistent with federal law governing the subject of the proposal (e.g., Underground Injection Control program, Resource Conservation and Recovery Act, etc.).
- g) Where any information required by this Subpart is inapplicable or unavailable, the proposal shall include a justification for such inapplicability or unavailability.

**Section 102.142 Dismissal**

- a) Failure of the proponent to satisfy the content requirements for proposals under this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.
- b) Failure of the proponent to pursue disposition of the proposal in a

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timely manner will render a proposal subject to dismissal. In making this determination, the Board shall consider factors including, but not limited to, the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.

- c) Any person may file a motion challenging the sufficiency of the proposal pursuant to 35 Ill. Adm. Code 101.243.
- d) A proposal shall be dismissed for inadequacy in cases in which the Board, after evaluating the proposal, cannot determine the jurisdictional basis on which the proposal is made. In all such cases, a statement informing the proponent of the Board's basis for dismissal shall be made. Dismissal of a proposal shall not bar a proponent from re-submitting a proposal in the absence of any deadline imposed by the Act or Board regulations.

## SUBPART D: AUTHORIZATION, SCHEDULING, AND NOTICE OF HEARINGS

## Section 102.160 Authorization Of Hearing

- a) The Clerk shall assign a docket number to any proposal. All regulatory proposals will be placed on the Board agenda for determination of adequacy under the Act and Sections 102.121 and 102.141. *If the Board finds that any such proposal is not plainly devoid of merit, does not deal with subject on which a hearing has been held within the preceding 6 months, is accompanied by an adequate statement of supporting reasons and a petition signed by at least 200 persons, and meets the requirements of this Part, the Board will schedule a public hearing for consideration of the proposal. If a proposal is made by the Agency, ENR, or DNS, the Board shall schedule a public hearing without regard to the above conditions.* Pursuant to Section 28 of the Act, the Board may also in its discretion schedule a public hearing upon any proposal without regard to the above conditions. (Section 28 of the Act.) The proponent must cure any inadequacy identified by Board order before the proposal will proceed to hearing.

- b) If the Board determines that a proposal meets the requirements of subsection (a), and if any filing fee required by the Act and 35 Ill. Adm. Code 101.120 has been paid, the Board will issue an order accepting the proposal for hearing. Such an order will be construed as starting the timeclock for purposes of any applicable economic impact study and first notice publication deadlines pursuant to Sections 27 and 28.2 of the Act.

- c) When the Board authorizes a hearing, the Chairman will designate an attending Board member. A member of the Board may serve as hearing officer if otherwise qualified, and such hearing need not be attended by another Board member.

- d) In the case of a proposed regulatory change under the provisions of 35

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Ill. Adm. Code 307.211(j) or 304.141(c), the requirement of subsection (a) relating to a requirement of 200 signatures shall not apply. In such case only a single hearing shall be required, to be held in the affected county.

- e) The Board may consolidate proposals for hearing or decision.

## Section 102.161 Scheduling of Hearings

- a) Except as otherwise provided by the Act, no substantive regulation shall be adopted, amended or repealed by the Board until after at least one public hearing. In the case of site-specific rules, a public hearing shall be held in the affected county. In the case of state-wide regulations, public hearings shall be held in at least two counties of the state.
- b) The Board need not hold a hearing on a procedural regulation, except as provided by Section 5.01 of the APA.
- c) After consideration of the number and complexity of issues involved in a regulatory proposal, the hearing officer will issue an order preliminary specifying the number of hearings to be held on that proposal.
- d) If the proponent or any participant wishes to request a hearing beyond the number of hearings specified by the hearing officer pursuant to subsection (c), that person must demonstrate, in a motion to the hearing officer, that failing to hold an additional hearing would result in material prejudice to the movant. The motion may be oral, if made at hearing or written. The movant must show that he or she exercised due diligence in its participation in the proceeding and why an additional hearing, as opposed to the opportunity to submit written comments pursuant to Section 102.320, is necessary.
- e) Notwithstanding subsection (d), the Board will schedule an additional hearing or hearings on its own motion, if it finds that additional hearing would aid the Board or the hearing officer in its decision on the proposal.

## Section 102.162 Notice Of Hearing

- a) The hearing officer will set a time and place for hearing. The Clerk shall give notice of the date of the hearing as follows:

- 1) By notice in the Board's Environmental Register; and
- 2) At least 20 days prior to the hearing date, by public advertisement in a newspaper of general circulation in the county in which the hearing is to be held. Where required by federal law, including but not limited to air pollution and RCRA proposals, newspaper notice shall be published at least 30 days prior to the hearing date.

- b) The hearing officer will give notice by mail to the proponent and to

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all persons who have submitted their names and addresses to the Clerk concerning the proposal.

- c) Hearings which are continued on the hearing record for a period of 45 days or less do not require notice that complies with subsections (a) and (b).

## Section 102.163 Notice Of Site-Specific RCRA Proposals

- a) Public notice of hearings on site-specific RCRA proposals shall be given at least 30 days before the date of the hearing.
- b) In addition to the requirements of Section 28 of the Act and Section 102.211, the Board, at a minimum, will give notice of hearings on a site-specific RCRA proposal to the following persons:

- 1) Federal agencies as designated by USEPA;
- 2) Illinois Department of Transportation;
- 3) Illinois Department of Conservation;
- 4) Illinois Department of Energy and Natural Resources;
- 5) Illinois Department of Public Health;
- 6) The governor or any other state adjacent to the county in which the facility is located; and
- 7) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.

- c) In addition to the methods of notice by publication of Section 28 of the Act and Section 102.241, the Board will give notice by radio broadcast in the area of the facility. That notice will include the information required by subsections (d)(2) and (d)(4) through (d)(8) below.

- d) A hearing notice on a site-specific RCRA proposal will include the following information:

- 1) The address of the Board office;
- 2) Name and address of the proponent and, if different, of the facility for which the site-specific rule is sought;
- 3) A brief description of the business conducted at the facility and the activity described in the petition;
- 4) A description of the relief requested in the petition and the Board's docket number of the proceeding;
- 5) Name, address and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the proposal;
- 6) The name, address and telephone number of the Agency's representative in the rulemaking;
- 7) A description of any written comment period or a statement that a comment period will be established in the future;
- 8) A statement that the record in the rulemaking is available at the

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Board office for inspection, except those portions which are claimed or determined to be trade secrets, and that procedures are available whereby disclosure may be sought by the public pursuant to 35 Ill. Adm. Code 102.

- 9) A statement that site-specific rules may be adopted pursuant to Title VII of the Act and 35 Ill. Adm. Code 120, and a reference to the Board regulations sought to be modified; and
- 10) Any additional information considered necessary or proper.

## SUBPART E: ECONOMIC IMPACT STUDY DETERMINATIONS

## Section 102.180 Board Determination

- a) Within 60 days of the date that the Board accepts a proposal for hearing pursuant to Section 28 of the Act and Section 102.160, the Board shall determine whether an economic impact study should be prepared.
- b) *The close of the record during the rulemaking proceeding, the Board may determine that an economic impact study should be prepared, if the proposal has been substantially modified or if information in the record indicates that an economic impact study would be advisable.* (Section 27 of the Act.) However, this subsection is not applicable to proceedings involving required rules pursuant to Section 28.2 of the Act.
- c) *If the Board determines that an economic impact study should be conducted, ENR shall conduct such a study in accordance with "AN ACT in relation to natural resources, research, data collection and environmental studies" (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7401 et seq.). The Board may identify specific issues to be addressed in the study.* (Section 27 of the Act.)

## Section 102.181 Request For Determination

- a) *Within 21 days of the date that the Board accepts a proposal for hearing pursuant to Section 28 of the Act and Section 102.160, any person may request that the Board determine that an economic impact study should or should not be prepared.* (Section 27 of the Act.)
- b) *Such request shall be made in writing, and shall detail the reasons for the request. The request shall describe, to the extent reasonably practicable, the economic impact of the proposed rule. (Section 27 of the Act.) The description may include, but is not limited to, projected cost of compliance, the number of affected persons, and the impact of compliance costs on affected persons. All material facts asserted in the request shall be verified by affidavit. The person filing the request shall file the original and nine (9) copies with the Clerk, and one copy each with the Agency, ENR, the*



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Attorney General, and proponent.

- d) No hearing will be held on any request filed pursuant to this Section.

**Section 102.182 Basis For Board Determination**

In determining whether an economic impact study should be performed, the Board will consider:

- a) Information in the record furnished by the proponent pursuant to Sections 102.121 and 102.141 and by any person filing a request for determination pursuant to Section 102.231;
- b) *Its assessment of the potential economic impact of the rule;*
- c) *The potential for consideration of the economic impact absent such a study;*
- d) *The extent, if any, to which the Board is free under the statute authorizing the rule to modify the substance of the rule based upon the conclusions of an economic impact study; and*
- e) *Any other considerations the Board deems appropriate.* (Sections 27 and 28.2 of the Act.) Those considerations may include, but are not limited to, statutory deadlines for promulgation of rules and possible impact of the proposal on natural and cultural resources (fish, wildlife, endangered species, archeological resources, etc.).

**Section 102.183 Notice Of Board Determination**

The Board will issue a written interlocutory order giving the reasons for its determination. The proponent, the Agency, ENR, the Attorney General and any person who has asked to be placed on the notice list for the proposal will be given notice of the Board's determination. Orders entered pursuant to this Section may be appealed only pursuant to 35 Ill. Adm. Code 101.304.

## SUBPART F: CERTIFICATION OF REQUIRED RULES

**Section 102.200 Agency Certification**

*When the Agency proposes a rule which it believes to be a required rule as defined by Section 28.2(a) of the Act and Section 102.101, the Agency shall so certify in its proposal, identifying the federal law to which the proposed rule will respond.* (Section 28.2(e) of the Act.) Such certification shall include citation to the specific section of the specific federal law to which the proposed rule will respond.

**Section 102.201 Challenge To Agency Certification**

- a) If any person wishes to challenge the Agency's certification that a proposed rule is a required rule, that person shall file an objection to that certification within 21 days of the date of the Board's order

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accepting a proposal for hearing. Such objection shall state the reasons that the objector believes that the proposed rule is not a required rule, and shall include all arguments which the objector wishes the Board to consider. A copy of the objection shall be served upon the Agency and ENR.

- b) The Agency may file a response to any objection within 10 days of the service of that objection. No reply by the objector will be allowed, unless the Board orders otherwise to avoid material prejudice.
- c) No hearing will be held on any objection filed pursuant to this Section.

**Section 102.202 Board Determination**

- a) The Board will rule upon any objection filed pursuant to this Subpart within 60 days of the date that the Board accepts a proposal for hearing. The Board's ruling will be made in its order determining whether an economic impact study will be prepared, issued pursuant to Section 102.180.
- b) In ruling upon an objection to an Agency certification, the Board will consider all information in the record of that proceeding, including but not limited to the proposal, the objection, and the Agency response to the objection. The burden of proof is on the objector.
- c) The Board will give notice of its determination to the objector, the Agency, ENR, and any person who has asked to be placed on the notice list for that proposal.
- d) Orders entered pursuant to this Section are interlocutory in nature and may be appealed only pursuant to 35 Ill. Adm. Code 101.304.

## SUBPART G: AUTHORITY OF HEARING OFFICER

**Section 102.220 Authority Of Hearing Officer**

The hearing officer has the duty to conduct a fair hearing, to take all the necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record. He or she will have all powers necessary to these ends, including (but not limited to) the authority to:

- a) Require and establish a schedule for, and notice and distribution of, any pre-hearing submission of testimony and written exhibits;
- b) Require all participants to state their position with respect to the proposal;
- c) Administer oaths and affirmations;
- d) Examine witnesses and direct witnesses to testify;
- e) Regulate the course of the hearing, including but not limited to controlling the order of proceedings;
- f) Establish reasonable limits on the duration of the testimony and questioning of any witness and limit repetitious or cumulative

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- testimony and questioning;
- g) Issue, in the name of the Board, an order compelling the answering of interrogatories or other discovery requests;
  - h) Order the production of evidence as specified in Section 102.261 and 35 Ill. Adm. Code 101.261;
  - i) Initiate, schedule and conduct a pre-hearing conference as specified in Subpart H;
  - j) Issue subpoenas pursuant to Section 102.262 and 35 Ill. Adm. Code 101.260;
  - k) Exclude late-filed briefs and comments from inclusion in the record for decision;
  - l) Rule upon motions as specified in 35 Ill. Adm. Code 101.247 and this part;
  - m) Rule upon objections and evidentiary questions;
  - n) Establish a schedule for discovery, including a date by which discovery must be completed; and
  - o) Where pre-hearing submission of hearing testimony or exhibits has been required, allow the admission of testimony or exhibits which were not pre-submitted, if necessary to prevent undue delay or material prejudice.

## Section 102.221 Notice And Service Lists

- a) The hearing officer shall maintain a notice list for each regulatory proceeding. The notice list will consist of those persons who have furnished their names and addresses for inclusion on the notice list for a specific proceeding. Notice of all Board action and hearing officer orders will be given to all persons included on the notice list.
- b) The hearing officer may establish a service list for any regulatory proceeding in addition to the notice list. The hearing officer may direct participants to serve copies of all documents upon the persons listed on the service list. In deciding whether to establish a service list, the hearing officer will consider factors including but not limited to, the complexity of the proceeding and the number of participants.

## Section 102.222 Effect Of Hearing Officer Ruling

All decisions, orders, and rulings made by the hearing officer remain in effect during the pendency of any appeal to the Board of that decision, order, or ruling.

SUBPART H: PRE-HEARING CONFERENCES

## Section 102.240 Initiation And Scheduling

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- a) To the extent consistent with any deadline for adoption of any regulations mandated by state or federal law, prior to initiating any hearing on a regulatory proposal, the Board may assign a qualified hearing officer who may schedule a pre-hearing conference between the proponent and any or all of the potentially affected persons. (Section 27(e) of the Act.) The hearing officer may schedule a pre-hearing conference on his or her own motion, or on the motion of the proponent or any potentially affected person. A "potentially affected person" is any person, as defined by the Act and Section 102.101, who demonstrates any nexus to the source of the pollutant to be controlled by the proposal or who shows some impact from the pollutant to be controlled by the proposal. A motion to schedule a pre-hearing conference shall be directed to the hearing officer.
- b) The notice requirements of Section 28 of the Act and Section 102.161 shall not apply to such pre-hearing conferences. (Section 27(e) of the Act.) However, the hearing officer will give notice to any person who has requested inclusion on the notice list of that proposal.

## Section 102.241 Purpose

The purpose of a pre-hearing conference shall be:

- a) To maximize understanding of the intent and application of the proposal;
- b) To reach agreement on aspects of the proposal, if possible; and
- c) To attempt to identify and limit the issues of disagreement among the participants to promote efficient use of the time at hearing. (Section 27(e) of the Act.)

## Section 102.242 Pre-hearing Order

- a) No record of the pre-hearing conference need be kept, nor shall any participant or the Board be bound by any discussions conducted at the pre-hearing conference.
- b) Notwithstanding subsection (a), with the consent of all participants in the pre-hearing conference, the hearing officer may enter a pre-hearing order delineating issues to be heard, agreed facts, and other matters.
- c) If the participants in the pre-hearing conference agree to having a pre-hearing order entered pursuant to subsection(b), the hearing officer may require that those participants furnish the text of a proposed order setting forth the substance of the agreements reached at the pre-hearing conference. The hearing officer will enter that order if he or she agrees that it sets forth the substance of the agreement. The order shall identify which participants have agreed to the substance of the order.
- d) A pre-hearing order shall not be binding on nonparticipants in the

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*pre-hearing conference.* (Section 27(e) of the Act.)

## SUBPART I: MOTIONS AND DISCOVERY

## Section 102.260 Motion Practice

Motion practice in regulatory proceedings is governed by 35 Ill. Adm. Code 101. Subpart H. All motions and responses shall be served upon the proponent, the Agency, ENR, the Attorney General, and all persons on any service list established pursuant to Section 102.221(b).

## Section 102.261 Production Of Information

The production of information in regulatory proceedings is governed by 35 Ill. Adm. Code 101.261.

## Section 102.262 Subpoenas

The issuance and enforcement of subpoenas in regulatory proceedings is governed by 35 Ill. Adm. Code 101.260(b) through (i).

## SUBPART J: REGULATORY HEARINGS

## Section 102.280 Pre-hearing Submission Of Testimony and Exhibits

- a) The proponent shall submit all written testimony and any related exhibits 21 days prior to the hearing at which the witness testifies, unless the hearing officer directs otherwise to prevent material prejudice or undue delay.
- b) The hearing officer may require the pre-hearing submission of testimony and any related exhibits by participants other than the proponent if the hearing officer determines that such a procedure will provide for a more efficient hearing.
- c) The original and four (4) copies of pre-submitted testimony and exhibits shall be filed with the Clerk. The Agency, ENR, and, if a participant, the Attorney General shall each be served with one copy of each testimony and exhibit. One copy shall also be served upon the proponent and each participant on any service list, unless otherwise specified or limited by the hearing officer. Such service shall be initiated on or before the date that copies are filed with the Clerk.
- d) All testimony and exhibits shall be submitted in the form required by 35 Ill. Adm. Code 101.103 and labelled with the docket number of the proceeding, the name of the witness submitting the material or exhibit, and the title of the material or exhibit.
- e) The proponent and each participant who has pre-submitted testimony shall bring copies of that testimony and any exhibits to the hearing.

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- f) Testimony submitted prior to hearing will be entered into the record as if read, unless the hearing officer determines that it will aid public understanding to have the testimony read. All persons testifying will be sworn and will be subject to examination. Modifications to previously submitted testimony and exhibits may be allowed by the hearing officer at hearing provided that such modifications are either non-substantive in nature or would not materially prejudice another person's participation at hearing. Objections to such modifications are waived unless raised at hearing.
- g) Where pre-hearing submission of testimony is required pursuant to subsection (a) and (b), any testimony which is not pre-submitted in a timely manner will be allowed only as time permits pursuant to Section 102.220(o).

## Section 102.281 Transcript

All testimony shall be recorded stenographically. When the transcript is filed with the Clerk, the hearing officer will receive and rule on typographical corrections and reporting errors from any person who may examine the transcript for accuracy. Failure of any witness to correct the transcript within 14 days after its receipt in Board offices constitutes a waiver of any right to correct.

## Section 102.282 Admissible Information

All information which is relevant and not repetitious or privileged shall be admitted by the hearing officer. The hearing officer will rule on objections.

## Section 102.283 Presentation Of Testimony

- a) All witnesses at hearings shall be sworn.
- b) Testimony shall be in narrative form.

## Section 102.284 Questioning Of Witnesses

All witnesses shall be subject to questioning by any person. Repetitious, irrelevant, harassing, or cumulative questioning will be prohibited by the hearing officer. The Board will not consider as substantive evidence any unsworn information which is presented in the form of a question during questioning of any witness.

## Section 102.285 Record For Decision

The record includes the transcript, all written testimony, all exhibits admitted at hearing, and all public comments, briefs and other information timely filed with the Clerk.

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## SUBPART K: ECONOMIC IMPACT HEARINGS

**Section 102.300 Hearings On The Economic Impact Study Of New Proposals**

- a) Before the final adoption of any proposal, the Board shall conduct at least one hearing on any economic impact study submitted by ENR on any proposed regulation, or proposed amendment to existing regulation, unless otherwise provided by the Act.
- b) *In the case of a required rule, if the economic impact study is not submitted to the Board within six (6) months of the Board's decision that an economic impact study should be conducted, the Board may proceed to adopt a required rule without an economic impact study. However, to the extent possible consistent with Section 28.2(b) of the Act, the Board shall conduct a hearing on the economic impact of the proposed required rule. (Section 28.2 of the Act.)* Pursuant to Section 28 of the Act, this requirement may be fulfilled by considering economic impact at any merit hearing on the proposed required rule.
- c) Hearings held pursuant to this Section may be consolidated with any other hearings held pursuant to this Part.

**Section 102.301 Hearings On The Economic Impact Study Of Existing Regulations**

- a) *Within a reasonable time, but not more than 120 days, after each economic impact study on existing regulations has been filed by ENR, the Board shall conduct public hearings on such study.*
- b) *After conclusion of the hearings, the Board shall publish its findings and conclusions on the areas covered by the study and the testimony received by the Board. The Board will satisfy this requirement by entering a written order.*
- c) *The Board shall also specifically determine whether, as a result of its findings and conclusions, any regulations of the Board shall be modified or repealed.*
- d) *If the Board concludes that modification or repeal may be necessary, it shall propose such modification as regulations and conduct further hearings on said modification.*
- e) *Any such proposed modifications shall not require any additional economic study. (Section 4(b) of "AW ACT in relation to natural resources, research, data collection and environmental studies.)*

## SUBPART L: PUBLIC COMMENTS

**Section 102.320 Public Comments**

Any person may submit written comments on any proposal within 14 days after the receipt of the transcript in Board offices or within 14 days after regulation

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revision under Section 102.340, unless otherwise specified by the hearing officer or the Board to prevent material prejudice or undue delay. Comments shall be filed with the Clerk and served upon the Agency, ENR, the Attorney General (if a participant), the proponent, and the participants on any service list established by the hearing officer pursuant to Section 102.221. Comments which are not timely filed will not be considered, except as allowed by the hearing officer or the Board to prevent material prejudice.

## SUBPART M: BOARD ACTION

**Section 102.340 Revision Of Proposed Regulations**

- a) The Board may revise the proposed regulations before adoption upon its own motion or in response to suggestions made at hearing and in written comments made prior to second notice. No additional hearing on the revisions need be held.
- b) *The Board may modify and subsequently adopt any proposed regulations, or amendments to existing regulations without any additional economic impact study; provided that such modification by the Board does not significantly alter the intent and purpose of the proposed regulation which was the subject of ENR's economic impact study. (Section 27(b) of the Act.)*
- c) Unless otherwise provided in the Act, the Board may revise proposed regulations after hearing in response to objections or suggestions made by JCAR pursuant to Sections 5.01(b) and 7.06(a) of the APA. *The Board may make such revision where it finds:*
  - 1) *That such objections or suggestions relate to the statutory authority upon which the regulation is based, whether the regulation is in proper form, or whether adequate notice was given; and*
  - 2) *That the record before the Board is sufficient to support such a change without further hearing. (Section 28 of the Act.)*

**Section 102.341 Adoption Of Regulations**

- a) *In adopting any new regulation, except a required rule or an identical in substance regulation, the Board shall consider those elements detailed in any economic impact study performed by ENR on that regulation. The Board shall, in its written opinion, make a determination, based upon the economic impact study and other evidence in the record, as to whether the proposed regulation has any adverse economic impact on the people of the State of Illinois. (Section 27(b) of the Act.)*
- b) *In the case of a required rule, the Board will follow the procedures of subsection (a), except as provided in Section 102.300(b).*
- c) *As provided by Sections 13(c), 13.3, 17.5, 22.4(a), 22.4(d), and*

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22.7(d) of the Act, the provisions of Title VII of the Act and Section 5 of the APA shall not apply to identical in substance rulemakings.

**Section 102.342 First Notice Of Proposed Regulations**

Except when otherwise directed by the Act, the Board shall give first notice of its proposed adoption, amendment, or repeal of regulations pursuant to Section 5.01 of the APA. The first notice period shall be at least 45 days, and shall begin on the day that first notice is published in the Illinois Register. The Board will accept written comments from any person concerning the proposed regulations during the first notice period.

**Section 102.343 Second Notice Of Proposed Regulations**

- a) Except when otherwise directed by the Act, the Board shall give second notice of its proposed adoption, amendment, or repeal of regulations to JCAR. The second notice period shall begin on the date written notice is received by JCAR, and shall expire 45 days after the date, except as provided by Section 5.01 of the APA. The Board will accept comments only from JCAR during the second notice period.
- b) After the beginning of the second notice period, no substantive changes will be made to the proposed regulation, except in response to objections or suggestions from JCAR. Such changes will be made pursuant to Section 102.340(c).

**Section 102.344 Notice Of Board Final Action**

The Board will give notice of its final action on a proposal to the proponent, the Agency, ENR, the Attorney General, and all persons on the notice list. The Board will publish notice of its final action in the Environmental Register, and will enter a written opinion stating the reasons in support of its final action.

**Section 102.345 Adoption Of Identical In Substance Regulation**

- a) Prior to adopting identical in substance regulations, the Board will:
  - 1) Make available to the public a proposed Opinion and Order containing the text of the rules;
  - 2) Publish the proposed regulations in the Illinois Register;
  - 3) Serve a copy of the proposed Opinion and Order on the USEPA; and
  - 4) Receive written comments from the USEPA and other persons for at least 45 days after the date of publication in the Illinois Register.
- b) After consideration of comments from the USEPA, the Agency, the Attorney General and the public, the Board shall adopt the verbatim text of such USEPA regulations as are necessary and appropriate for

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authorization of the program. Except as provided in Section 7.2 of the Act, the only changes that may be made by the Board to the federal regulations are those changes that are necessary for compliance with the Illinois Administrative Code, and technical changes that in no way change the scope or meaning of any portion of the regulations. (Section 7.2(a) of the Act.)

**Section 102.346 Adoption Of Emergency Regulations**

- a) When the Board finds that a situation exists which reasonably constitutes a threat to the public interest, safety, or welfare, the Board may adopt regulations in accordance with Section 5.02 of the APA. (Section 27(c) of the Act.)
- b) When the Board finds that a severe public health emergency exists, the Board may, in relation to any proposed regulation, order that such regulation take effect without delay. The Board shall proceed with any required hearings while the regulation continues in effect. (Section 27(c) of the Act.)

**Section 102.347 Adoption Of Peremptory Regulations**

- a) When the Board finds that a peremptory rulemaking is necessary and states in writing its reasons for that finding, the Board shall adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State pursuant to Section 6.01 of the APA.
- b) Notice of such peremptory rulemaking will be published in the Illinois Register. (Section 5.03 of the APA.)

**Section 102.348 Adoption Of Temporary Regulations**

- a) The Board may adopt a proposed regulation prior to its consideration of an economic impact study when such study is filed with the Board less than 120 days in advance of a date on which a temporary non-emergency regulation or provision thereof would lapse prior to adoption of a permanent regulation or provision thereof on the same subject, or less than 120 days in advance of a deadline for adoption of the regulation which is established in a state statute. (Section 27 of the Act.)
- b) Such adopted regulation shall be effective until 180 days after the economic impact study required pursuant to this Section is filed with the Board, and in no event shall a regulation adopted pursuant to this procedure stay in effect for more than one year. (Section 27 of the Act.)

SUBPART N: MOTION FOR RECONSIDERATION AND APPEAL

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**Section 102.360 Filing Of Motion For Reconsideration**

Motion for reconsideration or modification of any Board order taking substantive action on a regulatory proposal shall be filed in accordance with 35 Ill. Adm. Code 101.246. The contents of such motions are governed by 35 Ill. Adm. Code 101.242.

**Section 102.361 Disposition Of Motions For Reconsideration**

- a) *After commencement of the second notice period, no substantive changes may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of JCAR. (Section 5.01(b) of the APA.) Therefore, submission of second notice of a proposal to JCAR will preclude the Board from revising that proposal in response to a motion for reconsideration. However, the Board may resubmit a rule for first notice if necessary to prevent material prejudice.*
- b) *An adopted rule becomes effective upon the filing of that rule with the Secretary of State. Therefore, the Board is precluded from allowing a motion for reconsideration of final order adopting a rule, if that rule has been filed with the Secretary of State.*

**Section 102.362 Correction of Publication Errors**

The Board may make technical corrections to proposed or adopted rules, published in the Illinois Register or filed with the Secretary of State, only in accordance with 1 Ill. Adm. Code 100.240. No hearing need be held on such corrections.

**Section 102.363 Appeal**

Any final Board order may be appealed to the appellate court within 35 days of the entry of that order, pursuant to Sections 29 and 41 of the Act.

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- 1) Heading of the Part: Regulatory and Informational Hearings and Proceedings

- 2) Code citation: 35 Ill. Adm. Code 102

- 3) Section Numbers:

<u>Section Numbers:</u>	<u>Proposed Action:</u>
102.100	New Section
102.102	New Section
102.104	New Section
102.106	New Section
102.108	New Section
102.110	New Section
102.112	New Section
102.200	New Section
102.202	New Section
102.204	New Section
102.206	New Section
102.208	New Section
102.210	New Section
102.212	New Section
102.300	New Section
102.302	New Section
102.304	New Section
102.306	New Section
102.400	New Section
102.402	New Section
102.404	New Section
102.406	New Section
102.408	New Section
102.410	New Section
102.412	New Section
102.414	New Section
102.416	New Section
102.418	New Section
102.420	New Section
102.422	New Section
102.424	New Section
102.426	New Section
102.428	New Section
102.430	New Section
102.500	New Section
102.502	New Section
102.504	New Section
102.600	New Section
102.602	New Section
102.604	New Section



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- 102.606 New Section  
 102.608 New Section  
 102.610 New Section  
 102.612 New Section  
 102.614 New Section  
 102.700 New Section  
 102.702 New Section  
 102.704 New Section  
 102.706 New Section

4) Statutory authority: 415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 26, 27, 28, 28.2, 29, and 41 of the Environmental Protection Act (415 ILCS 5).

5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules and adopt new procedural rules at Parts 101-130. Part 102 as proposed contains the existing Part 102 rulemaking procedures. As proposed, Part 102 references the procedures of Part 101, but is otherwise a stand-alone part. This means that any person who wishes to participate in a rulemaking need not read, and possibly be confused by, the rules for adjudicatory procedures and requirements.

6) Will these proposed repealer replace emergency rules currently in effect?  
 No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed repealer contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of statewide policy objectives: This rulemaking imposes procedural mandates on units of local government to the extent they may appear before the Board.

11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

Clerk's Office  
 Illinois Pollution Control Board  
 100 W. Randolph St., Suite 11-500  
 Chicago, IL 60601

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## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

Interested persons may request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620 or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

Additionally, the Board will hold two public hearings on these rules. The first hearing will be April 11, 2000 at 1:30 p.m. at:

Illinois Pollution Control Board  
 Hearing Room 403  
 600 S. Second Street  
 Springfield, IL

The second hearing will be May 4, 2000 at 1:30 p.m. at:

James R. Thompson Center  
 Room 9-040  
 100 W. Randolph Street  
 Chicago, IL

12) Initial regulatory flexibility analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking affects those small businesses, small municipalities, and not-for-profit corporations that appear before the Board.

B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments do not require extensive reporting, bookkeeping or other procedures.

C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney.

13) Regulatory Agenda on which this rulemaking was Summarized: January, 2000

The full text of the proposed rule begins on the next page:

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## POLLUTION CONTROL BOARD

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TITLE 35: ENVIRONMENTAL PROTECTION  
 SUBTITLE A: GENERAL PROVISIONS  
 CHAPTER I: POLLUTION CONTROL BOARD

## PART 102

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AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28,

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28.2, 29, and 41) and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB Reg. 1398, effective January 16, 1985; Part repealed, new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16 at 14 Ill. Reg. 20472, effective December 11, 1990; old Part repealed, new Part adopted in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 102.100 Applicability

- a) This Part applies to all regulatory and informational hearings and proceedings, and must be read in conjunction with 35 Ill. Adm. Code 101. Hearings conducted pursuant to this Part are quasi-legislative in nature and the purpose of such hearings is to gather information and comments to guide the Board in its rulemaking process. All testimony must be sworn.
- b) All persons taking part in these hearings are participants, rather than parties as in contested cases. Non-attorneys may represent themselves and others at regulatory hearings and may ask questions of witnesses or give testimony or comment as allowed by the hearing officer.

## Section 102.102 Severability

If any provision of this Part or its application to any person is adjudged invalid, such adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

## Section 102.104 Definitions

For the purpose of this Subpart, words and terms will have the meaning as defined in 35 Ill. Adm. Code 101.Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

## Section 102.106 Types of Regulatory Proposals

- a) The Act provides for 4 types of regulatory proposals:
  - 1) Identical in substance rulemakings, as defined in Sections 7.2, 13.3, 28.2 and 28.4 of the Act [415 ILCS 5/7.2, 13.3., 28.2, and 28.4];

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- 2) Federally required rules, as defined in Section 28.2 of the Act [415 ILCS 5/28.2];
- 3) Other regulatory proposals, both of general applicability and not of general applicability as allowed by Sections 26, 27 and 28 of the Act [415 ILCS 5/26, 27, and 28]; and
- 4) Clean Air Act fast track rulemakings as defined by Section 28.5 of the Act [415 ILCS 5/28.5].

The IAPA provides for three types of rulemakings:

- 1) General rulemaking pursuant to Section 5-40 of the IAPA [5 ILCS 100/5-40];
- 2) Emergency rulemaking pursuant to Section 5-45 of the IAPA [5 ILCS 100/5-45]; and
- 3) Peremptory rulemaking pursuant to Section 5-50 of the IAPA [5 ILCS 100/5-50].

## Section 102.108 Public Comments

- a) The Board will accept written comments from any person concerning a regulatory proposal during the first notice period as defined in Section 102.604 of this Part. However, when adopting identical-in-substance regulations, the Board will accept written comments from USEPA and other persons for at least 45 days after the date of publication of the proposed regulations or amendments in the Illinois Register in accordance with Section 102.610 of this Part.
- b) Any person may submit written comments on any proposal within 14 days after the receipt of the hearing transcript in Board offices unless otherwise specified by the hearing officer or the Board.
- c) Comments must be filed with the Clerk and served in accordance with 35 Ill. Adm. Code 101.Subpart C, upon the Environmental Protection Agency (Agency), Department of Natural Resources (DNR), the Attorney General (if a participant), the proponent, and the participants on any service list established by the hearing officer pursuant to Section 102.422 of this Part unless otherwise specified by the hearing officer or the Board.
- d) Comments that are not timely filed or properly served will not be considered, except as allowed by the hearing officer or the Board to prevent material prejudice.

## Section 102.110 Waiver of Requirements

The Board may waive any of the non-statutory requirements of this Part upon a showing by a person that a particular requirement would create an undue burden on that person such as where the burden of compliance imposes financial costs that would preclude further participation, or where compliance would result in the provision of information already provided in that proceeding.

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**Section 102.112 Other Proceedings**

Pursuant to Section 5(d) of the Act or other applicable law, the Board may conduct such other noncontested or informational hearings as may be necessary to accomplish the purposes of the Act or other applicable law. Such hearings may include, but are not limited to, inquiry hearings to gather information on any subject the Board is authorized to regulate.

**SUBPART B: REGULATIONS OF GENERAL APPLICABILITY, RESOURCE  
CONSERVATION AND RECOVERY ACT (RCRA) AMENDMENTS,  
AND SITE-SPECIFIC REGULATIONS**

**Section 102.200 Proposal for Regulations of General Applicability**

Any person may submit a regulatory proposal for the adoption, amendment, or repeal of a regulation. The original and 9 copies of each proposal must be filed with the Clerk and one copy each with the Attorney General, the Agency, and DNR.

**Section 102.202 Proposal Contents for Regulations of General Applicability**

Each proponent must set forth the following in its proposal:

- a) The language of the proposed rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring and language being deleted must be indicated by strike-outs. The proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100-Subpart C;
- b) A statement of the reasons supporting the proposal, including a statement of the facts that support the proposal, and a statement of the purpose and effect of the proposal, including environmental, technical, and economic justification. The statement must discuss the applicable factors listed in Section 27(a) of the Act. The statement must include, to the extent reasonably practicable, all affected sources and facilities and the economic impact of the proposed rule;
- c) A synopsis of all testimony to be presented by the proponent at hearing;
- d) Copies of any material to be incorporated by reference within the proposed rule pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75];
- e) Proof of service upon all persons required to be served pursuant to Section 102.422 of this Part;
- f) Unless the proponent is the Agency or DNR, a petition signed by at least 200 persons, pursuant to Section 28 of the Act and Section 102.410(b) of this Part;
- g) When the Agency proposes a rule it believes is federally required, a certification in accordance with Section 102.500 of this Part;
- h) When the proponent is a State agency, a diskette containing the

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- i) information required under subsection (a) of this Section; and
- j) When any information required under this Section is inapplicable or unavailable, a complete justification for such inapplicability or unavailability.

**Section 102.204 Proposal of RCRA Amendments**

In addition to satisfying the requirements of Section 102.202 of this Part, any proposal to amend the RCRA regulations must:

- a) Indicate whether it is made pursuant to the provisions of Section 22.4(a), 22.4(b) or 22.4(c) of the Act;
- b) Include a listing of all amendments to the corresponding federal regulations since the period encompassed by the last amendment of the Board's RCRA rules; and
- c) Include a certificate of service indicating that a copy of the proposal has been served on the USEPA. Service must be made at the following address:

Director, Waste Management Division  
USEPA, Region V  
77 W. Jackson Street  
Chicago, Illinois 60604

**Section 102.206 Notice of Site-Specific RCRA Proposals**

- a) Public notice of hearings on site-specific RCRA proposals will be given at least 30 days before the date of the hearing.
- b) In addition to the requirements of Section 28 of the Act, the Board, at a minimum, will give notice of hearings on a site-specific RCRA proposal to the following persons:
  - 1) Federal agencies as designated by the USEPA;
  - 2) Illinois Department of Transportation;
  - 3) Illinois Department of Natural Resources;
  - 4) Illinois Department of Public Health;
  - 5) The Governor or any other state adjacent to the county in which the facility is located; and
  - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.
- c) In addition to the methods of notice by publication of Section 28 of the Act and Section 102.416 of this Part, the Board will give notice by broadcast over at least one radio station in the area of the facility containing the information required by subsections (d)(2) and (d)(4) through (d)(8) of this Section.
- d) A hearing notice on a site-specific RCRA proposal will include the



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following information:

- 1) The address of the Board office;
- 2) Name and address of the proponent and, if different, of the facility for which the site-specific rule is sought;
- 3) A brief description of the business conducted at the facility and the activity described in the proposal;
- 4) A description of the relief requested in the proposal;
- 5) Name, address and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the proposal;
- 6) The name, address and telephone number of the Agency's representative in the rulemaking;
- 7) A description of any written comment period or a statement that a comment period will be established in the future;
- 8) A statement that the record in the rulemaking is available at the Board office for inspection, except those portions that are claimed or determined to be trade secrets, and that procedures are available whereby disclosure may be sought by the public. Any such claim must be made in accordance with 35 Ill. Adm. Code 130;
- 9) A statement that site-specific rules may be adopted pursuant to 415 ILCS 5/27 et seq. and Section 102.202 of this Part, and a citation to the Board regulations sought to be modified; and
- 10) Any additional information considered necessary or proper.

**Section 102.208 Proposal for Site-Specific Regulations**

Any person may submit a written proposal for the adoption, amendment or repeal of a substantive site-specific regulation. The original and 9 copies of each proposal must be filed with the Clerk of the Board and one copy each served upon the Agency, DNR, and the Attorney General.

**Section 102.210 Proposal Contents for Site-Specific Regulations**

Proponents of site-specific regulations other than those relating to RCRA must comply with the requirements of Section 102.202 of this Part in addition to the following requirements:

- a) The proposal must set forth the language of the proposed site-specific rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring and language being deleted must be indicated by strike-outs. If the proposed site-specific rule seeks an exemption from or modification of a rule of general applicability, the proposed site-specific rule may not be proposed as an amendment to the general rule. Instead, the site-specific rule must be proposed as its own section;

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- b) In the event that the proposed rule would replace the applicability of a general rule to the pollution source, the proposal must specify, with supporting documentation, the reasons why the general rule is not technically feasible or economically reasonable for the person or site. Such documentation must include relevant information on other similar persons' or sites' ability to comply with the general rule;
- c) The proposal must describe the person or site for which regulatory change is sought and the area affected by the proposed change. The proposal must also include a detailed assessment of the environmental impact of the proposed change, and include a description of available treatment or control options;
- d) The proposal must demonstrate that the Board may grant the requested relief consistent with federal law governing the subject of the proposal (e.g. Underground Injection Control program, Resource Conservation and Recovery Act, etc.);
- e) When the proponent is a State agency, the proponent also must provide a diskette containing the information required under subsection (a) of this Section; and
- f) When any information required under this Section is inapplicable or unavailable, the proposal must provide a complete justification for such inapplicability or unavailability.

**Section 102.212 Dismissal**

- a) Failure of the proponent to satisfy the content requirements for proposals under this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.
- b) Failure of the proponent to pursue disposition of the proposal in a timely manner will render a proposal subject to dismissal. In making this determination, the Board will consider factors including the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.
- c) A proposal will be dismissed for inadequacy in cases in which the Board, after evaluating the proposal, cannot determine the statutory authority on which the proposal is made. In all such cases, a statement informing the proponent of the Board's basis for dismissal will be made. Dismissal of a proposal will not bar a proponent from re-submitting a proposal in the absence of any deadline imposed by applicable law or Board regulations.
- d) Any person may file a motion challenging the statutory authority or sufficiency of the proposal pursuant to 35 Ill. Adm. Code 101.Subpart E.



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## NOTICE OF PROPOSED RULES

## Section 102.300 Applicability

This subpart applies to the adoption of rules proposed by the Agency and required to be adopted by the State under the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA). A "fast-track" rulemaking proceeding is a proceeding to promulgate a rule that the CAAA requires to be adopted. For purposes of this Section, "rules to be adopted" refers only to those regulations or parts of regulations for which the United States Environmental Protection Agency is empowered to impose sanctions against the State for failure to adopt such rules. [415 ILCS 5/28.5(a), (c)]

## Section 102.302 Agency Proposal

- a) When proposing a regulation required by the CAAA, the Agency must meet the following requirements:
  - 1) The proposal must set forth the proposed rule, which must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
  - 2) the Agency must have a cover sheet that prominently states that the Agency proposes the rule under Section 28.5 of the Act, unless another provision of this Act specifies the method for adopting a specific rule [415 ILCS 5/28.5(c)];
  - 3) The proposal must clearly identify the provisions and portions of the federal statute, regulations, guidance, policy statement, or other documents upon which the rule is based [415 ILCS 5/28.5(e)(3)];
  - 4) The proposal must include supporting documentation for the rule that summarizes the basis of the rule [415 ILCS 5/28.5(e)(4)];
  - 5) The proposal must describe in general the alternative selected and the basis for the alternative [415 ILCS 5/28.5(e)(5)];
  - 6) The proposal must summarize the economic and technical data that the Agency relied upon in drafting the proposed rule;
  - 7) The proposal must include a list of any documents that the Agency directly relied upon in drafting the proposed rule or that the Agency intends to rely upon at hearing, and copies of the documents;
  - 8) The proposal must set forth a description of the geographical area to which the rule is intended to apply, a description of the process or processes affected, and identification by classes of the entities expected to be affected, and a list of sources expected to be affected by the rule to the extent known to the Agency [415 ILCS 5/28.5(e)(8)]; and
  - 9) The proposal must include a diskette containing the information required under subsection (a)(1) of this Section.
- b) If the proposal fails to meet any of the requirements of subsection (a) of this Section, the Board may decide not to accept the proposal for filing.

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## Section 102.304 Hearings

- a) Within 14 days after the receipt of a rule the Board will file the proposed rule for first notice and schedule all hearings. Additionally, the Board will send notice to the appropriate newspaper of the scheduled hearing. Such notice will be published by the newspaper at least 30 days prior to the date of the hearing.
- b) The first hearing will be held within 55 days after receipt of the rule and is reserved for the Agency's testimony and witnesses.
- c) Within 7 days after the first hearing, any person may request a second hearing. Such a request may be made on the record at the first hearing or in writing. If done in writing it must be filed with the Board and served upon the service list.
- d) A second hearing will be held to hear comments on Department of Commerce and Community Affairs' economic impact study of the proposed rules. At least 20 days before the hearing, the Board shall notify the public of the hearing and make the economic impact study, or the Department of Commerce and Community Affairs' explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as part of any Board hearing considering such new rules. [415 ILCS 5/27(b)] See also Section 102.414 of this Part.
- e) The third hearing shall be scheduled to commence within 14 days after the first day of the second hearing and shall be devoted solely to any Agency response to the material submitted at the second hearing and to any response by other parties. [415 ILCS 5/28.5(g)] In order to cancel the third hearing, the Agency must state on the record at hearing that it and the affected entities are in agreement or notify the Board and the service list in writing.
- f) In order to meet statutory deadlines, hearing dates may be chosen by the assigned Board member and hearing officer without consultation with the participants. CAAA hearings need only be held in one affected area of the State.

## Section 102.306 Prefiled Testimony

- a) The hearing officer will close the service list for purposes of prefiled testimony at 4:30 p.m. 16 days before the date of hearing.
- b) Ten days before the hearing, copies of prefiled testimony must be filed with the Clerk and served upon all people who are on the service list as closed pursuant to subsection (a) of this Section.
- c) The Board may grant a waiver of the pre-filing deadline or service requirement for good cause.
- d) Participants who do not pre-file their testimony will only be allowed to testify if time remains in that hearing day. The hearing will not be continued from day to day to accommodate participants who do not

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pre-file.

**SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS,  
PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING  
CONFERENCES, AND HEARINGS**

**Section 102.400 Service and Filing of Documents**

All documents must be served and filed in accordance with 35 Ill. Adm. Code 101-Subpart C.

**Section 102.402 Motions, Production of Information, and Subpoenas**

Motion practice, production of information and the issuance of subpoenas in regulatory proceedings is governed by 35 Ill. Adm. Code 101. All motions and responses must be filed with the Board and served upon the hearing officer, the proponent, the Agency, and all persons on any service list established pursuant to subsection 102.422(b) of this Part.

**Section 102.404 Initiation and Scheduling of Prehearing Conferences**

a) *To the extent consistent with any deadline for adoption of regulations mandated by State or Federal law, prior to initiating any hearing on a regulatory proposal, the Board may assign a qualified hearing officer who may schedule a prehearing conference between the proponents and any or all of the potentially affected persons.* [415 ILCS 5/27(d)]

b) The hearing officer may schedule a prehearing conference on his or her own motion, or on the motion of the proponent or any potentially affected person. A "potentially affected person" is any person, as defined by the Act and 35 Ill. Adm. Code 101-202, who demonstrates any nexus to the source of the pollutant to be controlled by the proposal, or who shows some impact from the pollutant to be controlled by the proposal. A motion to schedule a prehearing conference must be directed to the hearing officer.

c) In accordance with Section 27(d) of the Act, the notice requirements of Section 28 of the Act and Section 102.416 will not apply to such prehearing conferences. However, the hearing officer will give notice to the proponents and any person who is included on the notice list of that proposal.

**Section 102.406 Purpose of Prehearing Conference**

The purpose of a prehearing conference is:

a) *To maximize understanding of the intent and application of the proposal;*

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- b) *To reach agreement on aspects of the proposal, if possible; and*  
 c) *To attempt to identify and limit the issues of disagreement among the participants to promote efficient use of time at hearing.* [415 ILCS 5/27(d).]

**Section 102.408 Prehearing Order**

a) *No record need be kept of the prehearing conference, nor shall any participant or the Board be bound by any discussions conducted at the prehearing conference.* [415 ILCS 5/27(d)]

b) Notwithstanding subsection (a) of this Section, with the consent of all participants in the prehearing conference, the hearing officer may enter a prehearing order delineating issues to be heard, agreed facts, and other matters.

c) If the participants in the prehearing conference agree to have a prehearing order entered pursuant to subsection (b) of this Section, the hearing officer may require that those participants furnish a draft of a proposed order setting forth the substance of the agreements reached at the prehearing conference. The hearing officer will enter that order if he agrees that it sets forth the substance of the agreement. The order will identify which participants have agreed to the substance of the order.

d) A prehearing order will not be binding on non-participants in the prehearing conference. [415 ILCS 5/27(d)]

**Section 102.410 Authorization of Hearing**

a) The Clerk will assign a docket number to any proposal. All regulatory proposals will be placed on the Board agenda for determination of adequacy under the applicable law and this Part. The proponent must cure any inadequacy identified by Board order before the proposal will proceed to hearing.

b) The Board will schedule a hearing on a proposal if it finds that such proposal is supported by an adequate statement of reasons, is accompanied by a petition signed by at least 200 persons, is not plainly devoid of merit and does not deal with a subject on which a hearing has been held within the preceding six months. [415 ILCS 5/28(a)]

c) In accordance with Section 28(a) of the Act, if a proposal is made by the Agency, or DNR, the Board shall schedule a public hearing without regard to the above conditions in subsection (b) of this Section as soon as practicable. [415 ILCS 5/28(a)]

d) Pursuant to Section 28 of the Act, the Board may also in its discretion schedule a public hearing upon any proposal without regard to the above conditions in subsection (b) of this Section. [415 ILCS 5/28(a)]

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- e) If the Board determines that a proposal meets the requirements of subsection (b) of this Section or is otherwise adequate under applicable law, and if any required filing fee has been paid, the Board will issue an order accepting the proposal for hearing. Such an order will be construed as starting the time clock for purposes of any first notice publication deadlines pursuant to Sections 28.2 and 28.5 of the Act. [415 ILCS 5/28(a)]
- f) When the Board authorizes a hearing, the Chairman will designate one or more attending Board members and a qualified hearing officer. A member of the Board may serve as hearing officer if otherwise qualified.
- g) The Board may consolidate proposals for hearing or decision.

## Section 102.412 Scheduling of Hearings

- a) Except as otherwise provided by applicable law, no substantive regulation shall be adopted, amended, or repealed until after a public hearing within the area of the State concerned. In the case of site-specific rules, a public hearing will be held in the affected county. Except as otherwise provided by applicable law, in the case of state-wide regulations, hearings shall be held in at least two areas. [415 ILCS 5/28(a)]
- b) If the proponent or any participant wishes to request a hearing beyond the number of hearings specified by the hearing officer, that person must demonstrate, in a motion to the hearing officer, that failing to hold an additional hearing would result in material prejudice to the movant. The motion may be oral, if made at hearing, or written. The movant must show that he exercised due diligence in his participation in the proceeding and why an additional hearing, as opposed to the submission of written comments pursuant to Section 102.108 of this Part, is necessary.

## Section 102.414 Hearings on the Economic Impact of New Proposals

- a) In accordance with Section 27(b) of the Act, except as otherwise provided by applicable law, before the adoption of any proposed rules, the Board shall request that the Department of Commerce and Community Affairs conduct a study of the economic impact of the proposed rules. The Board shall conduct at least one public hearing on the economic impact of those new rules. At least 20 days before the hearing, the Board shall notify the public of the hearing and make the economic impact study, or the Department of Commerce and Community Affairs' explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as a part of any Board hearing considering such new rules. In adopting any such new rule, the Board shall, in its written opinion, make a

## POLLUTION CONTROL BOARD

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*determination, based upon the evidence in the public hearing record, including, but not limited to the economic impact study, as to whether the proposed rule has any adverse economic impact on the people of the State of Illinois.* [415 ILCS 5/27(b)]

b) If information of the economic impact of a proposed regulation is given at a general hearing on the proposal, the Board need not hold a special hearing on only the economic impact.

## Section 102.416 Notice of Hearing

- a) The hearing officer will set a time and place for hearing. The Clerk will give notice of the date of the hearing as follows or as otherwise required by applicable law:
- 1) By notice in the Board's Environmental Register and on the Board's Web site;
  - 2) At least 20 days prior to the scheduled date of the hearing the Board shall give notice of such hearing by public advertisement in a newspaper of general circulation in the area of the State concerned. The notice will include, the date, time, place and purpose of such hearing [415 ILCS 5/28(a)]; and
  - 3) Where required by federal law, including air pollution and RCRA proposals, newspaper notice will be published at least 30 days prior to the hearing date.
- b) In accordance with Section 28(a) of the Act or as otherwise required by applicable law, the Clerk will give notice by mail to the proponent and to all persons who are on the notice list in accordance with Section 102.422 of this Part.
- c) Hearings that are continued on the hearing record for a period of 45 days or less do not require notice that complies with subsections (a) and (b) of this Section.

## Section 102.418 Record

All oral testimony will be recorded stenographically. The proposal and all attachments, the transcript, all written testimony, all exhibits admitted in connection with the hearing, and all written submissions filed with the Clerk under Section 102.108 of this Part before or after the close of the hearing will constitute the record.

## Section 102.420 Authority of the Hearing Officer

The hearing officer will have the same authorities in rulemaking proceedings as those granted for adjudicatory matters in 35 Ill. Adm. Code 101.Subpart F.

## Section 102.422 Notice and Service Lists

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

- a) The hearing officer will maintain a notice list for each regulatory proceeding. The notice list will consist of those persons who have furnished their names and addresses to the hearing officer or the Clerk's office concerning the proposal. Notice of all Board actions and hearing officer orders will be given to all persons included on the notice list.
- b) The hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. The hearing officer may direct participants to serve copies of all documents upon the persons listed on the service list. In deciding whether to establish a service list, the hearing officer will consider factors including the complexity of the proceeding and the number of participants. For purposes of fast-track rulemakings under Section 28.5 of the Act, participants of record will be the individuals on the service list.
- c) The Board will not accept general requests to appear on all notice lists. Interested persons must submit their names for each proceeding in accordance with subsection (a) of this Section.

**Section 102.424 Prehearing Submission of Testimony and Exhibits**

- a) The proponent must submit all written testimony and any related exhibits 21 days prior to the hearing at which the witness testifies, unless the hearing officer directs otherwise to prevent material prejudice or undue delay.
- b) The hearing officer may require the prehearing submission of testimony, questions, responses, answers, and any related exhibits by the proponent or participants other than the proponent if the hearing officer determines that such a procedure will provide for a more efficient hearing.
- c) The original and 9 copies of any pre-submitted testimony, questions, answers, responses, or exhibits must be filed with the Clerk. The hearing officer, the Agency, and, if a participant, the Attorney General and DNR must each be served with one copy of each pre-submitted testimony, questions, answers, responses, or exhibits. One copy of any pre-submitted testimony, questions, answers, responses, or exhibits must also be served upon the proponent and each participant on any service list, unless otherwise specified or limited by the hearing officer. Such service must be initiated on or before the date that copies are filed with the Clerk.
- d) All testimony, questions, answers, responses, and exhibits must be served and submitted in the form required by 35 Ill. Adm. Code 101-Subpart C and labeled with the docket number of the proceeding, the name of the witness submitting the material or exhibit, and the title of the material or exhibit.
- e) The proponent and each participant who has pre-submitted testimony, questions, answers, or responses must bring the number of copies

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designated by the hearing officer of that testimony and any exhibits to the hearing.

- f) Testimony submitted prior to hearing will be entered into the record as if read, unless the hearing officer determines that it will aid public understanding to have the testimony read. All persons testifying will be sworn and will be subject to examination. Modifications to previously submitted testimony and exhibits may be allowed by the hearing officer at hearing provided that such modifications are either non-substantive in nature or would not materially prejudice another person's participation at hearing. Objections to such modifications are waived unless raised at hearing.
- g) Where prehearing submission of testimony is required pursuant to subsections (a) and (b) of this Section, any testimony that is not pre-submitted in a timely manner will be allowed only as time permits pursuant to Section 102.420 of this Part.

**Section 102.426 Admissible Information**

All information that is relevant and not repetitious or privileged will be admitted by the hearing officer.

**Section 102.428 Presentation of Testimony and Order of Hearing**

- a) All witnesses at hearings must be sworn;
- b) Testimony must be in narrative form; and
- c) Proponents must present testimony in support of the proposal first. Any questions or testimony in support or opposition to the proposal must follow as directed by the hearing officer.

**Section 102.430 Questioning of Witnesses**

All witnesses must be subject to questioning by any person. Repetitious, irrelevant, harassing, or cumulative questioning will be prohibited by the hearing officer. The Board will not consider as substantive evidence any unsworn information that is presented in the form of a question during questioning of any witness.

**SUBPART E: CERTIFICATION OF REQUIRED RULES****Section 102.500 Agency Certification**

- a) When the Agency proposes a rule which it believes to be a required rule, as defined by Section 28.2(a) of the Act the Agency shall so certify in its proposal, identifying the federal law to which the proposed rule will respond and the rationale upon which the certification is based. [415 ILCS 5/28.2(b)] Such certification must

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- include a citation to the specific section of the specific federal law to which the proposed rule will respond.
- b) *The Board shall either accept or reject the certification within 45 days and shall reference the certification in the first notice of the proposal published in the Illinois Register as provided by the Illinois Administrative Procedure Act. [415 ILCS 5/28.2(b)]*

**Section 102.502 Challenge to Agency Certification**

- a) If any person wishes to challenge the Agency's certification that a proposed rule is a required rule, that person must file an objection to that certification within 21 days after the date of the Board's order certifying a proposal for hearing. Such objection must state the reasons that the objector believes that the proposed rule is not a required rule, and must include all arguments that the objector wishes the Board to consider. A copy of the objection must be served upon the Agency and DNR.
- b) The Agency may file a response to any objection within 14 days after the service of that objection. No reply by the objector will be allowed, unless the Board orders otherwise to avoid material prejudice.
- c) No hearing will be held on any objection filed pursuant to this Section.

**Section 102.504 Board Determination**

- a) The Board will rule upon any objection filed pursuant to this Subpart within 60 days after the date that the Board accepts a proposal for hearing.
- b) In ruling upon an objection to an Agency certification, the Board will consider all information in the record of that proceeding, including the proposal, the objection, and the Agency response to the objection. The burden of proof is on the objector.
- c) The Board will give notice of its determination to the objector, the Agency, DNR, and any person who has asked to be placed on the notice list pursuant to Section 102.422 of this Part for that proposal.
- d) Orders entered pursuant to this Section are interlocutory in nature and may be appealed only pursuant to 35 Ill. Adm. Code 101.308.

## SUBPART F: BOARD ACTION

**Section 102.600 Revision of Proposed Regulations**

- a) The Board may revise the proposed regulations before adoption upon its own motion or in response to suggestions made at hearing and in written comments made prior to second notice. No additional hearing

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- on the revisions need be held.
- b) Unless otherwise provided by applicable law, the Board may revise the proposed regulations after hearing in response to objections or suggestions made by the Joint Committee on Administrative Rules (JCAR) pursuant to subsection (b) of Section 5.40 and subsection (a) of Section 5.110 of the Illinois Administrative Procedure Act. The Board may make such revision where it finds:

- 1) That such objections or suggestions relate to the statutory authority upon which the regulation is based, whether the regulation is in proper form, or whether adequate notice was given; and
- 2) That the record before the Board is sufficient to support such a change without further hearing. [415 ILCS 5/28(a)]

**Section 102.602 Adoption of Regulations**

The Board adopts first notice, second notice and final opinions and orders in regulatory matters. Only the first notice proposal and the final adopted rules are published by the Secretary of State in accordance with the IAPA. In adopting any new regulation, except a required rule or an identical in substance regulation or as applicable law otherwise provides, the Board shall, in its written opinion, make a determination, based upon the evidence in the public hearing record, including, but not limited to the economic impact study, as to whether the proposed rule has any adverse economic impact on the people of the State of Illinois. [415 ILCS 5/27(b)]

**Section 102.604 First Notice of Proposed Regulations**

Except when otherwise directed by applicable law, the Board will give first notice of its proposed adoption, amendment, or repeal of regulations pursuant to Section 5-40 of the IAPA. [5 ILCS 100/5-40] The first notice period will be at least 45 days, and will begin on the day that first notice is published in the Illinois Register. The Board will accept written comments from any person concerning the proposed regulations during the first notice period.

**Section 102.606 Second Notice of Proposed Regulations**

- a) Except when otherwise directed by applicable law, the Board will give second notice of its proposed adoption, amendment, or repeal of regulations to JCAR. The second notice period will begin on the date written notice is received by JCAR, and will expire 45 days after the date, except as provided by Section 5-40 of the IAPA. [5 ILCS 100/5-40] The Board will accept comments only from JCAR during the second notice period.
- b) After the beginning of the second notice period, no substantive changes will be made to the proposed regulation, except in response to



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objections or suggestions from JCAR. Such changes will be made pursuant to Section 102.600 of this Part.

**Section 102.608 Notice of Board Final Action**

The Board will give notice of its final action on a proposal to the proponent, the Agency, DNR, the Attorney General, and all persons on the notice list. The Board will publish notice of its final action in the Environmental Register and on its Web site, and will enter a written opinion stating the reasons in support of its final action.

**Section 102.610 Adoption of Identical In Substance Regulation**

- a) Prior to adopting Identical In Substance regulations, the Board will:
  - 1) Make available to the public a proposed opinion and order containing the text of the rules at the Board's Chicago Office and on the Board's Web site;
  - 2) Publish the proposed regulations in the Illinois Register;
  - 3) Serve a copy of the proposed opinion and order on USEPA; and
  - 4) Receive written comments from USEPA and other persons for at least 45 days after the date of publication in the Illinois Register.
- b) After consideration of comments from USEPA, the Agency, the Attorney General and the public, the Board will adopt the verbatim text of such USEPA regulations as are necessary and appropriate for authorization of the program. Except as provided in Section 7.2 of the Act, the only changes that may be made by the Board to the federal regulations are those changes that are necessary for compliance with the Illinois Administrative Code, and technical changes that in no way change the scope or meaning of any portion of the regulations. [415 ILCS 5/7.2(a)]
- c) As provided by Sections 13(c), 13.3, 17.5, 22.4(a), 22.4(d), and 22.7(d) of the Act, the provisions of Title VII of the Act and Section 5-35 of the IAPA [5 ILCS 100/5-35] will not apply to Identical In Substance Rulemakings. [415 ILCS 5/13(c), 13.3, 17.5, 22.4(a), 22.4(d), and 22.7(d)]

**Section 102.612 Adoption of Emergency Regulations**

- a) When the Board finds that a situation exists which reasonably constitutes a threat to the public interest, safety, or welfare, the Board may adopt regulations pursuant to and in accordance with Section 5-45 of the IAPA. [415 ILCS 27(c)]
- b) When the Board finds that a severe public health emergency exists, the Board may, in relation to any proposed regulation, order that such regulation shall take effect without delay. The Board will proceed

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with any required hearings while the regulation continues in effect. [415 ILCS 5/27(c)]

**Section 102.614 Adoption of Peremptory Regulations**

- a) When the Board finds that a peremptory rulemaking is necessary and states in writing its reasons for that finding, the Board will adopt said peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State pursuant to Section 5-70 of the IAPA.
- b) Notice of such peremptory rulemaking will be published in the Illinois Register in accordance with Section 5-50 of the IAPA.

**SUBPART G: MOTION FOR RECONSIDERATION AND APPEAL****Section 102.700 Filing of Motion for Reconsideration**

Motion for reconsideration or modification of any Board order taking substantive action on a regulatory proposal must be filed in accordance with 35 Ill. Adm. Code 101.1002. The contents of such motions are governed by 35 Ill. Adm. Code 101.Subpart J.

**Section 102.702 Disposition of Motions for Reconsideration**

- a) After commencement of the second notice period, no substantive changes may be made to a proposed rulemaking unless they are made in response to an objection or suggestion of JCAR in accordance with Section 5-40(c) of the IAPA. [5 ILCS 100/5-40(c)] Therefore, submission of second notice of a proposal to JCAR will preclude the Board from revising that proposal in response to a motion for reconsideration. However, the Board may resubmit a rule for first notice if necessary to prevent material prejudice.
- b) An adopted rule becomes effective upon the filing of that rule with the Secretary of State. Therefore, the Board is precluded from allowing a motion for reconsideration of a final order adopting a rule, if that rule has been filed with the Secretary of State.

**Section 102.704 Correction of Publication Errors**

The Board may make technical corrections to proposed or adopted rules, published in the Illinois Register or filed with the Secretary of State, only in accordance with 1 Ill. Adm. Code 100.240. No hearing need be held on such corrections.

**Section 102.706 Appeal**

Any final Board order may be appealed to the appellate court within 35 days of

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the service of that order, pursuant to Sections 29 and 41 of the Act. [415 ILCS 5/29 and 41]

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- 1) Heading of the Part: Tax Certifications
- 2) Code citation: 35 Ill. Adm. Code 125
- 3) Section Numbers: /  
125.100 New Section  
125.102 New Section  
125.104 New Section  
125.200 New Section  
125.202 New Section  
125.204 New Section  
125.206 New Section  
125.208 New Section  
125.210 New Section  
125.212 New Section  
125.214 New Section  
125.216 New Section
- 4) Statutory authority: Implementing and authorized by Sections 11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55 of the Property Tax Code [35 ILCS 200], and Sections 26 and 27 of the Environmental Protection Act [415 ILCS 5].
- 5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules, and adopt new procedural rules at Parts 101-130. This Part contains new procedures for determining tax certification of pollution control facilities and low sulfur dioxide emission coal fueled devices (35 ILCS 200/11-5, 11-20, 11-35, and 11-50).
- 6) Will these proposed rules replace emergency rules currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed rules contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of statewide policy objectives: This rulemaking imposes procedural mandates on units of local government to the extent they may appear before the Board.
- 11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

## PART 125

## TAX CERTIFICATIONS

## SUBPART A: GENERAL PROVISIONS

Section  
125.100 Applicability  
125.102 Severability  
125.104 Definitions

SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES  
AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES

Section  
125.200 General  
125.202 Initiation of Tax Certification Proceeding  
125.204 Petition Content Requirements  
125.206 Dismissal of Petition  
125.208 Agency Recommendation and Petitioner Response  
125.210 Public Hearing  
125.212 Hearing Notice  
125.214 Burden of Proof  
125.216 Board Action

AUTHORITY: Implementing and authorized by Sections 11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55 of the Property Tax Code [35 ILCS 200] and Sections 26 and 27 of the Environmental Protection Act [415 ILCS 5].

SOURCE: Adopted in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 125.100 Applicability

- a) This Part applies to any person seeking, for property tax purposes, a board certification that a facility or portion thereof is a pollution control facility, as defined in Section 125.200(a)(1) of this Part, or that a device is a low sulfur dioxide emission coal fueled device as defined in Section 125.200(b)(1) of this Part.
- b) This Subpart must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all adjudicatory

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Clerk's Office  
Illinois Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601

Interested persons may request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620 or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

Additionally, the Board will hold two public hearings on these rules. The first hearing will be April 11, 2000 at 1:30 p.m. at:

Illinois Pollution Control Board  
Hearing Room 403  
600 S. Second Street  
Springfield, IL

The second hearing will be May 4, 2000 at 1:30 p.m. at:

James R. Thompson Center  
Room 9-040  
100 W. Randolph Street  
Chicago, IL

12) Initial regulatory flexibility analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking affects those small businesses, small municipalities, and not-for-profit corporations that appear before the Board.

B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments do not require extensive reporting, bookkeeping or other procedures.

C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.

13) Regulatory agenda on which this rulemaking was summarized: January 2000

The full text of the proposed rule begins on the next page:

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proceedings before the Board. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Subpart, the provisions of this Subpart apply.

**Section 125.102 Severability**

If any provision of this Part or its application to any person is adjudged invalid, such adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

**Section 125.104 Definitions**

For the purpose of this Subpart, words and terms will have the meaning as defined in 35 Ill. Adm. Code 101.Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

**SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES  
AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES****Section 125.200 General**

a) Pollution Control Facilities. For tax purposes, pollution control facilities shall be certified as such by the Board. [35 ILCS 200/11-20]

1) "Pollution control facility" means, for purposes of this Part, any system, method, construction, device or appliance appurtenant thereto, or any portion of any building or equipment, that is designed, constructed, installed or operated for the primary purpose of: eliminating, preventing, or reducing air or water pollution, as the terms "air pollution" and "water pollution" are defined in the Act; or treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property. This term does not include any of the following:

- A) Any facility with the primary purpose of eliminating, containing, preventing or reducing radioactive contaminants or energy, or treating waste water produced by the nuclear generation of electric power;
- B) A large diameter pipes or piping systems used to remove and disperse heat from water involved in the nuclear generation of electric power;
- C) Any facility operated by any person other than a unit of government, whether within or outside of the territorial boundaries of a unit of local government, for sewage

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D) Land underlying a cooling pond. [35 ILCS 200/11-10]  
It is the policy of this State that pollution control facilities should be valued, at 33 1/3% of the fair cash value of their economic productivity to their owners. [35 ILCS 200/11-5]

b) Low Sulfur Dioxide Emission Coal fueled Devices. For tax purposes, a low sulfur dioxide emission coal fueled device shall be certified as such by the Board. [35 ILCS 200/11-50]

1) "Low sulfur dioxide emission coal fueled device" means, for purposes of this Part, any device used or intended for the purpose of burning, combusting or converting locally available coal in a manner which eliminates or significantly reduces the need for additional sulfur abatement that would otherwise be required under State or Federal air emission standards. For purposes of this definition, the word device includes all machinery, equipment, structures and all related apparatus, including coal feeding equipment, of a coal gasification facility designed to convert locally available coal into a low sulfur gaseous fuel and to manage all waste and by-product streams. [35 ILCS 200/11-40]

2) It is the policy of this State that the use of low sulfur dioxide emission coal fueled devices should be encouraged as conserving nonrenewable resources, reducing pollution and promoting the use of abundant, high-sulfur, locally available coal as well as promoting the health and well-being of the people of this State, and should be valued at 33 1/3% of their fair cash value. [35 ILCS 200/11-35]

**Section 125.202 Initiation of Tax Certification Proceeding**

A person may initiate a tax certification proceeding by filing a petition that meets the requirements of Section 125.204 of this Subpart. The petitioner also must serve a copy of the petition on the Agency.

**Section 125.204 Petition Content Requirements**

a) Pollution Control Facilities. The following information must be contained in a petition for a Board certification that a facility or portion thereof is a pollution control facility:

- 1) A detailed description of the nature of petitioner's activities at the location of the facility or portion thereof for which the petitioner seeks a tax certification;
- 2) A detailed description of the facility or portion thereof for which the petitioner seeks a tax certification;
- 3) A detailed description of the primary purpose for which the facility or portion thereof is designed, constructed, installed

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or operated;

- 4) A statement requesting or waiving a hearing on the petition;
  - 5) Citation to supporting documents or legal authorities whenever such are used as a basis for the petition (relevant portions of such documents and legal authorities other than Board decisions, reported state and federal court decisions, and state and federal regulations and statutes must be appended to the petition);
  - 6) If the facility or portion thereof for which the petitioner seeks a tax certification involves an existing environmental permit or a tax certification, a copy of the material portion of the permit or permit application; and
  - 7) An affidavit verifying any facts submitted in the petition.
- b) Low Sulfur Dioxide Emission Coal Fueled Devices. The following information must be contained in a petition for a Board certification that a device is a low sulfur dioxide emission coal fueled device:
- 1) detailed description of the nature of petitioner's activities at the location of the device for which the petitioner seeks a tax certification;
  - 2) A detailed description of the device for which the petitioner seeks a tax certification;
  - 3) A detailed description of the purpose for which the device is used or intended;
  - 4) A statement requesting or waiving a hearing on the petition;
  - 5) Citation to supporting documents or legal authorities whenever such are used as a basis for the petition (relevant portions of such documents and legal authorities other than Board decisions, reported state and federal court decisions, and state and federal regulations and statutes must be appended to the petition);
  - 6) If the device for which the petitioner seeks a tax certification involves an existing environmental permit or a pending environmental permit application, a copy of the material portion of the permit or permit application; and
  - 7) An affidavit verifying any facts submitted in the petition.
- c) The petition may contain information not required by this Section that is relevant to whether the facility or portion thereof or the device is entitled to a tax certification. The petition must contain headings corresponding to the information described in each subsection of this Section. If the petitioner believes that any of the informational requirements of this Section do not apply to the tax certification sought, the petition must so state and provide supporting reasons.

**Section 125.206 Dismissal of Petition**

The Board may at any time dismiss a petition for any of the following reasons:

- a) The petition fails to comply with any of the requirements of Section

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125.204 of this Part; or

- b) The petitioner is not pursuing disposition of the petition in a timely manner.

**Section 125.208 Agency Recommendation and Petitioner Response**

- a) If the Agency wishes to file a recommendation on the petition, it must do so within 45 days after the petition is filed, or when a hearing has been scheduled, at least 30 days before hearing, whichever is earlier. The recommendation may present any information that the Agency believes is relevant to the Board's consideration of the requested tax certification. The Agency must serve a copy of the recommendation on the petitioner and the hearing officer.
- b) The petitioner may file a response to any Agency recommendation within 14 days after the Agency serves the petitioner with a copy of the recommendation. The petitioner must serve a copy of any response on the Agency and the hearing officer.

**Section 125.210 Public Hearing**

- a) The Board will hold a public hearing in a tax certification proceeding when:

- 1) The petitioner or the Agency requests a hearing; or
- 2) The Board in its discretion determines that a hearing would be advisable.
- b) If a hearing is to be held, the hearing officer will set a time and place for the hearing. The hearing officer will make an attempt to consult with the petitioner and the Agency before scheduling a hearing. Hearings will be held in the county where the facility or portion thereof or the device for which the petitioner seeks a tax certification is located, unless the hearing officer orders otherwise.

**Section 125.212 Hearing Notice**

After receiving notification from the hearing officer of the scheduled hearing date made pursuant to Section 125.210 of this Subpart, the Clerk will, in accordance with 35 Ill. Adm. Code 101, cause publication of a notice of hearing in a newspaper of general circulation in the county where the facility or portion thereof or the device for which the petitioner seeks a tax certification is located.

**Section 125.214 Burden of Proof**

The burden of proof in a tax certification proceeding is on the petitioner. The petitioner must prove that the facility or portion thereof for which it seeks a tax certification is a pollution control facility, as defined in

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Section 125.200(a)(1) of this Part, or that the device for which it seeks a tax certification is a low sulfur dioxide emission coal fueled device, as defined in Section 125.200(b)(1) of this Part.

## Section 125.216 Board Action

- a) Pollution Control Facilities. *If it is found that the claimed facility or relevant portion thereof is a pollution control facility as defined in Section 125.200(a)(1) of this Part, the Board shall enter a finding and issue a certificate to that effect. The certificate shall require tax treatment as a pollution control facility, but only for the portion certified if only a portion is certified. The effective date of a certificate shall be the date of the petition for the certificate or the date of the construction of the facility, whichever ever is later. [35 ILCS 200/11-25]*
- b) Low Sulfur Dioxide Emission Coal Fueled Devices. *If it is found that the claimed device meets the definition of low sulfur dioxide emission coal fueled device as set forth in Section 125.200(b)(1) of this Part, the Board shall enter a finding and issue a certificate that requires tax treatment as a low sulfur dioxide emission coal fueled device. The effective date of a certificate shall be on January 1 preceding the date of certification or preceding the date construction or installation of the device commences, whichever is later. [35 ILCS 200/11-56]*
- c) After notice to the holder of the certificate and an opportunity for a hearing pursuant to this Subpart, the Board may on its own initiative revoke or modify a pollution control certificate or a low sulfur dioxide emission coal fueled device certificate whenever any of the following appears:
  - 1) The certificate was obtained by fraud or misrepresentation;
  - 2) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of pollution control facilities or a low sulfur dioxide emission coal fueled device; or
  - 3) The pollution control facility to which the certificate relates has ceased to be used for the primary purpose of pollution control and is being used for a different purpose. [35 ILCS 200/11-30]
- d) The Clerk will provide the petitioner and the Agency with a copy of the Board's order setting forth the Board's findings and certificate, if any. [35 ILCS 200/11-30]

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1) Heading of the Part: , Regulatory Relief Mechanisms

2) Code citation: 35 Ill. Adm. Code 104

3) <u>Section Numbers:</u>	<u>Proposed Action:</u>
104.100	New Section
104.102	New Section
104.104	New Section
104.200	New Section
104.202	New Section
104.204	New Section
104.206	New Section
104.208	New Section
104.210	New Section
104.212	New Section
104.214	New Section
104.216	New Section
104.218	New Section
104.220	New Section
104.222	New Section
104.224	New Section
104.226	New Section
104.228	New Section
104.230	New Section
104.232	New Section
104.234	New Section
104.236	New Section
104.238	New Section
104.240	New Section
104.242	New Section
104.244	New Section
104.246	New Section
104.248	New Section
104.250	New Section
104.300	New Section
104.302	New Section
104.304	New Section
104.306	New Section
104.308	New Section
104.310	New Section
104.400	New Section
104.402	New Section
104.404	New Section
104.406	New Section
104.408	New Section
104.410	New Section

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104.412 New Section  
 104.414 New Section  
 104.416 New Section  
 104.418 New Section  
 104.420 New Section  
 104.422 New Section  
 104.424 New Section  
 104.426 New Section  
 104.428 New Section

4) Statutory authority: 415 ILCS 5/5, 14.2(c), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, and 39.5 of the Environmental Protection Act (415 ILCS 5).

5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules and adopt new procedural rules at Parts 101-130. Part 104 contains new rules and modifications of old rules for adjudicatory procedures which grant relief from current regulations, such as variances and adjusted standards. Subpart A contains general provisions for Part 104. Subpart B contains modifications to the Board's prior rules regarding variances (415 ILCS 5/35(a) (1998)). Subpart C contains rules for provisional variances (415 ILCS 5/35(b) (1998)). Subpart D contains modifications to existing rules for adjusted standards (415 ILCS 5/28 (1998)).

6) Will these proposed rules replace emergency rules currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed rules contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of statewide policy objectives: This rulemaking imposes procedural mandates on units of local government to the extent they may appear before the Board.

11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

Clerk's Office  
 Illinois Pollution Control Board  
 100 W. Randolph St., Suite 11-500  
 Chicago, IL 60601

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Interested persons may request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620 or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

Additionally, the Board will hold two public hearings on these rules. The first hearing will be April 11, 2000 at 1:30 p.m. at:

Illinois Pollution Control Board  
 Hearing Room 403  
 600 S. Second Street  
 Springfield, IL

The second hearing will be May 4, 2000 at 1:30 p.m. at:

James R. Thompson Center  
 Room 9-040  
 100 W. Randolph Street  
 Chicago, IL

12) Initial regulatory flexibility analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking affects those small businesses, small municipalities, and not-for-profit corporations that appear before the Board.

B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments do not require extensive reporting, bookkeeping or other procedures.

C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer.

13) Regulatory Agenda on which this rulemaking was summarized: January 2000

The full text of the proposed rule begins on the next page:

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## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED RULES

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

## PART 104

## REGULATORY RELIEF MECHANISMS

## SUBPART A: GENERAL PROVISIONS

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104.100 Applicability  
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104.104 Definitions

## SUBPART B: VARIANCES

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104.200 Filing Requirements  
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104.204 Resource Conservation and Recovery Act (RCRA) Variance Petition Contents  
104.206 Consistency with Federal Law

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104.246 Performance Bonds  
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## SUBPART C: PROVISIONAL VARIANCES

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104.300 Applicability  
104.302 Board Action  
104.304 Initiating a Request  
104.306 Notice  
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104.310 Simultaneous Variance Prohibition

## SUBPART D: ADJUSTED STANDARDS

Section  
104.400 General  
104.402 Initiation of Proceeding  
104.404 Request to Agency to Join as Co-Petitioner  
104.406 Petition Content Requirements  
104.408 Petition Notice Requirements  
104.410 Proof of Petition Notice Requirements  
104.412 Effect of Filing a Petition: Stay  
104.414 Dismissal of Petition  
104.416 Agency Recommendation and Petitioner Response  
104.418 Amended Petition, Amended Recommendation, and Amended Response  
104.420 Request for Public Hearing  
104.422 Public Hearing  
104.424 Hearing Notice  
104.426 Burden of Proof  
104.428 Board Action

**AUTHORITY:** Subparts B and C: Implementing Sections 5, 35, 36, 37 and 38 of the Environmental Protection Act (Act) [415 ILCS 5/5, 35, 36, 37 and 38] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subparts D through I: Implementing Sections 5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5 of the Act [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

**SOURCE:** Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1978; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 104.100 Applicability

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- a) This Part applies to adjudicatory proceedings before the Board that provide relief from environmental regulations under certain circumstances as set forth in Titles VII and IX of the Act. Specifically, this Part applies to regulatory relief mechanisms, meaning variances, provisional variances and adjusted standards.
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

**Section 104.102 Severability**

If any provision of this Part or its application to any person is adjudged invalid, such adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

**Section 104.104 Definitions**

For the purpose of this Subpart, words and terms will have the meaning as defined in 35 Ill. Adm. Code 101.Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

**SUBPART B: VARIANCES****Section 104.200 General**

- a) Description:
- 1) General Variance. A variance is a temporary exemption from any specified rule, regulation, requirement or order of the Board, which may be granted by the Board with or without conditions for a period of time not to exceed five years, upon presentation of adequate proof, by the petitioner that compliance with any rule, regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship. [415 ILCS 5/35(a)]
  - 2) Resource Conservation and Recovery Act (RCRA) Variance. A RCRA variance is an exemption from 35 Ill. Adm. Code 703, 720, 721, 722, 723, 724 or 725 or which allows the Illinois Environmental Protection Agency (Agency) to issue or modify any provision of a RCRA permit required pursuant to Section 21(f) of the Act.
- b) Effect of Filing:
- 1) The filing of a petition for a variance does not stay enforcement of a regulation except as provided in subsection (b)(2) of this Section.
  - 2) If any person files a petition for variance from a rule or regulation within 20 days after the effective date of such rule

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or regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any rule or regulation adopted by the Board which implements, in whole or in part, a State RCRA, Underground Injection Control (UIC), or National Pollutant Discharge Elimination System (NPDES) program shall not be stayed. The Board may hold a hearing upon said petition 5 days from the date of notice of such hearing or thereafter. [415 ILCS 5/38(b)]

**Section 104.202 Filing Requirements**

- a) Who May File. Any person seeking a variance from any rule or regulation, requirement or order of the Board that would otherwise be applicable to that person may file a variance petition.
- b) General Filing and Service Requirements. All general filing and service requirements for Board filings, including the form of filing and the fee requirements for filing, apply to the filing of a petition for variance. These general requirements are found at 35 Ill. Adm. Code 101.Subpart C.
- c) Special Filing and Service Requirements. In addition to the general requirements found at 35 Ill. Adm. Code 101.Subpart C, a person filing a petition for variance must meet the following requirements:
  - 1) One copy of the petition and all related documents must be served on the Agency. Such service on the Agency must be initiated on or before the date the petition is filed with the Board. Additionally, all RCRA variance petitions must be served on the United States Environmental Protection Agency (USEPA) Region V Director of Waste Management. An affidavit of service of the petition and related documents must accompany the filing with the Board; and
  - 2) The petition must contain all information or documents necessary to satisfy the petition contents requirements found in Sections 104.204, 104.206, and 104.208 of this Part.

**Section 104.204 Petition Content Requirements**

The petition must include the information required by subsections (a) through (n) of this Section. Additionally, there are specific content requirements set forth at Section 104.206 of this Part for RCRA variance petitions. If the petitioner believes that any of these requirements are not applicable to the specific variance requested, the petitioner must so state and explain the reasoning.

- a) A statement describing the regulation, requirement, or order of the Board from which a variance is sought. If variance from a regulation is sought, the statement must include the Illinois Administrative Code

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citation to the regulation as well as the effective date of that regulation. If variance from a requirement or order of the Board is sought, the statement must include the citation to that requirement or order of the Board promulgating that requirement, including docket number;

- b) A complete and concise description of the nature of petitioner's activity that is the subject of the proposed variance, including:
    - 1) The location of, and area affected by, the petitioner's activity;
    - 2) The location of points of discharge, and, as applicable, the identification of the receiving waterway or land, or, if known, the location of the nearest air monitoring station maintained by the Agency;
  - 3) An identification, including docket number, of any prior variance issued to petitioner and, if known, petitioner's predecessors, concerning similar relief;
  - 4) An identification, including number, of the environmental permits held by petitioner for the activity which may be affected by grant of variance;
  - 5) The number of persons employed by the petitioner's facility at issue and the age of that facility;
  - 6) The nature and amount of the materials used in the process or activity for which the variance is sought and a full description of the particular process or activity in which the materials are used;
  - 7) A description of the relevant pollution control equipment already in use; and
  - 8) The nature and amount of emissions, discharges or releases of the constituent in question currently generated by the petitioner's activity;
- c) Data describing the nature and extent of the present or anticipated failure to meet the regulation, requirement, or order of the Board from which variance is sought and facts that support petitioner's argument that compliance with the regulation, requirement, or order of the Board was not or cannot be achieved by any required compliance date;
- d) A description of the efforts that would be necessary for the petitioner to achieve immediate compliance with the regulation, requirement, or Board order at issue. All possible compliance alternatives, with the corresponding costs for each alternative, must be set forth and discussed. The discussion of compliance alternatives must include the availability of alternate methods of compliance, the extent that such methods were studied, and the comparative factors leading to the selection of the control program proposed for compliance. The discussion of the costs of immediate compliance may include, but is not limited to, the overall capital costs and the annualized capital and operating costs;

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- e) Facts that set forth the reasons the petitioner believes that immediate compliance with the regulation, requirement, or order of the Board would impose an arbitrary or unreasonable hardship;
- f) A detailed description of the compliance plan, including:
  - 1) A discussion of the proposed equipment or proposed method of control to be undertaken to achieve full compliance with the regulation, requirement, or order of the Board;
  - 2) A time schedule for the implementation of all phases of the control program from initiation of design to program completion; and
  - 3) The estimated costs involved for each phase and the total cost to achieve compliance;
- g) A description of the environmental impact of the petitioner's activity including:
  - 1) The nature and amount of emissions, discharges, or releases of the constituent in question if the requested variance is granted, compared to that which would result if immediate compliance is required;
  - 2) The qualitative and quantitative description of the impact of petitioner's activity on human health and the environment if the requested variance is granted, compared to the impact of petitioner's activity if immediate compliance is required. Cross-media impacts, if any, must be discussed; and
  - 3) A statement of the measures to be undertaken during the period of the variance to minimize the impact of the discharge of contaminants on human, plant, and animal life in the affected area, including the numerical interim discharge limitations that can be achieved during the period of the variance;
- h) Citation to supporting documents or legal authorities whenever such are used as a basis for the petition. Relevant portions of such documents and legal authorities other than Board decisions, reported state and federal court decisions, or state and federal regulations and statutes must be appended to the petition;
- i) If the requested variance involves an existing permit or a pending permit application, a copy of the material portion of the permit or permit application must be appended to the petition;
- j) Any conditions petitioner suggests for the requested variance;
- k) A proposed beginning and ending date for the variance. If the petitioner requests that the term of the variance begin on a date other than the date on which the Board takes final action on the petition, a detailed explanation and justification for the alternate beginning date;
- l) A discussion of consistency with federal law, including an analysis of applicable federal law and facts that may be necessary to show compliance with federal law as set forth in Section 104.208 of this Part;



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- m) An affidavit verifying any facts submitted in the petition; and  
 n) A statement requesting or denying that a hearing should be held in this matter.

#### Section 104.206 Resource Conservation and Recovery Act (RCRA) Variance Petition Contents

In addition to the requirements of Sections 104.204 and 104.208 of this Part, a petition for a RCRA variance must meet the following requirements:

- a) All petitions for RCRA variances must include a showing that the Board can grant the requested relief consistent with, and establish RCRA permit conditions no less stringent than, those that would be required by RCRA, and the regulations thereunder promulgated by USEPA (40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268 and 270). Petitions must indicate whether any federal provisions authorize the relief requested, and must include any facts necessary to show that the petitioner would be entitled to the requested relief pursuant to federal law;
- b) Persons who have, or are required to have, a RCRA permit and who seek a RCRA variance that could result in modification or issuance of the RCRA permit must have on file with the Agency a RCRA permit application reflecting the requested variance prior to filing the variance petition;
- c) Petitioner must attach to the variance petition a copy of the RCRA permit application, or such portion as may be relevant to the variance request; and
- d) Petitioner must attach to the variance petition proof of service on USEPA as required by Section 104.202 of this Part.

#### Section 104.208 Consistency with Federal Law

- a) All petitions for variances from Title II of the Act or from 35 Ill. Adm. Code Subtitle B, Ch. I "Air Pollution," must indicate whether the Board may grant the requested relief consistent with the Clean Air Act (CAA) (42 USC 7401 et seq.) and the federal regulations adopted pursuant thereto. If granting a variance would require revision of the State Implementation Plan, the petition must indicate whether the requirements of Section 110(a) of the CAA (42 USC 7410(a)) and 40 CFR 51 will be satisfied.
- b) All petitions for variances from Title III of the Act; from 35 Ill. Adm. Code Subtitle C, Ch. I "Water Pollution," or from water pollution related requirements of any other title of the Act or chapter of the Board's regulations, must indicate whether the Board may grant the relief consistent with the Clean Water Act (CWA) (33 USC 1251 et seq.), USEPA effluent guidelines and standards, any other federal regulations, or any area-wide waste treatment management plan approved

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- by the Administrator of USEPA pursuant to Section 208 of the CWA (33 USC 1298).
- c) All petitions for variances from Title IV of the Act or from 35 Ill. Adm. Code Subtitle F, Ch. I "Public Water Supplies," and to the extent applicable, from Title V of the Act or from 35 Ill. Adm. Code Subtitle D, Ch. I "Mine Related Water Pollution," must indicate whether the Board may grant the relief consistent with the Safe Drinking Water Act (42 USC 300(f) et seq.), the federal National Primary Drinking Water Regulations (40 CFR 141) and Underground Injection Control Program and other federal regulations adopted pursuant thereto.

- d) All petitions for variances from Title V of the Act or from 35 Ill. Adm. Code Subtitle G, Ch. I "Waste Disposal," must indicate whether the Board may grant the requested relief consistent with the RCRA, and the federal regulations adopted pursuant thereto.

- e) For all petitions for RCRA variances, petitioner should consult the federal RCRA rules which contain procedures that are referred to as "Variances" (40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268 and 270). The petitioner should consult the comparable Board regulations to decide whether the variance procedures of this Part need to be followed.

#### Section 104.210 Petition for Extension of Variance

- a) A variance extension pursuant to Section 36(b) of the Act may be extended from year to year by affirmative action of the Board, but only if satisfactory progress has been shown by the petitioner. [415 ILCS 5/36(b)]

- b) A petition to extend a variance granted by the Board is a new petition for variance before the Board, and must be filed in accordance with this Subpart and 35 Ill. Adm. Code 101-Subpart C, including payment of the filing fee pursuant to Section 104.202(b) of this Part and 35 Ill. Adm. Code 101.302(f)(2).

- c) If the petitioner desires to have the term of the variance extension be sequential with the term of the prior variance, the petition to extend variance must be filed with the Board no later than 120 days prior to the termination of the variance, unless the petitioner can demonstrate that the petition for variance extension was filed as soon as practicable after the petitioner learned that it could not meet the compliance timeframe under the existing variance.

- d) In addition to the requirements of this Subpart, the petition for extension of variance must contain:

- 1) A detailed statement showing that satisfactory progress toward compliance has been or will have been achieved during the term of the prior variance [415 ILCS 5/36(b)];
- 2) A statement that the conditions of the prior variance have been fully met, or, if any condition or conditions have not been fully

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- met, a detailed explanation of the reason or reasons that the condition or conditions have not been fully met; and
- 3) A motion to incorporate any material from the record of the prior variance proceeding in accordance with 35 Ill. Adm. Code 101.306.

**Section 104.212 Motion for Modification of Internal Variance Compliance Dates**

- a) The petitioner may request, by written motion, modification of internal dates within a compliance schedule of an existing variance, so long as the modification does not extend the length of the existing variance period. Such written motion will not be considered to be an extension of the prior variance. The motion must be filed under the docket number of the existing variance, and must be filed with the Clerk and served upon the Agency, and any joined parties pursuant to 35 Ill. Adm. Code 101. Subpart D. The Agency must, and any joined parties may, file a response to that motion. Any response must be filed within 14 days after receipt of the motion.
- b) A motion for modification that would extend the length of the existing variance period constitutes a Petition for Extension of Variance and must be filed in accordance with Section 104.210 of this Part.

**Section 104.214 Agency's Notice of Petition**

- a) Within 14 days after receipt of the petition the Agency shall publish a single notice of such petition in a newspaper of general circulation in the county where the facility or pollution source is located. [415 ILCS 5/37(a)]
- b) Upon receipt of a petition for variance, the Agency shall promptly give written notice of such petition to:
  - 1) Any person in the county in which the installation or property for which variance is sought is located who has in writing requested notice of variance petitions, the State's attorney of such county;
  - 2) The Chairman of the County Board of such county; and
  - 3) Each member of the General Assembly from the legislative district in which that installation or property is located. [415 ILCS 5/37(a)]
- c) Upon receipt of a petition for RCRA variance, the Agency must promptly give notice of such petition to:
  - 1) Federal agencies as designated by USEPA;
  - 2) Illinois Department of Transportation;
  - 3) Department of Natural Resources;
  - 4) Illinois Department of Public Health;
  - 5) The Governor or any other state adjacent to the county in which the facility or pollution source is located; and
  - 6) Elected officials of any counties, in other states, adjacent to

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the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility or pollution source.

- d) In addition to the methods of notice stated in subsection (c) of this Section in a RCRA variance the Agency must also give notice by broadcast over at least one local radio station in the area of the facility or pollution source containing the information required by subsections (e) and (f) of this Section.
- e) The notices required by this Section must include the following:
  - 1) The street address of the facility or pollution source, and if there is no street address then the legal description or the location with reference to any well known landmark, highway, road, thoroughfare or intersection;
  - 2) A description of the requested relief;
  - 3) An indication that any person may request a hearing by filing with the Board a written objection to the grant of such variance within 21 days after the publication of the Agency's notice, together with a written request for hearing; and
  - 4) The Clerk of the Board's address and phone number and a statement that a copy of the variance may be obtained through the Clerk's Office.
- f) The Agency must file with the Board a certification of publication which states the date on which the notice was published and attach a copy of the published notice within 21 days after the publication of the notice.

**Section 104.216 Agency Investigation and Recommendation**

- a) Upon receipt of a petition for variance, the Agency shall promptly investigate such petition and consider the views of persons who might be adversely affected by the grant of a variance. [415 ILCS 5/37(a)]
- b) The Agency shall make a recommendation to the Board as to the disposition of the petition. [415 ILCS 5/37(a).] Unless otherwise allowed by the hearing officer or the Board, the recommendation must be filed with the Board within 45 days after the filing of the petition or amended petition, or where there has been a hearing scheduled, at least 30 days before hearing, whichever is earlier. The Agency must serve a copy of its recommendation by First Class mail on the petitioner, joined parties, and assigned hearing officer, if applicable. At a minimum, the recommendation must include:
  - 1) A description of the efforts made by the Agency to investigate the facts as alleged and to ascertain the views of persons who might be affected, and a summary of the views so ascertained;
  - 2) The location of the nearest air monitoring station maintained by the Agency where applicable;

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- 3) A statement of the degree to which, if at all, the Agency disagrees with the facts as alleged in the petition, including facts refuting any allegations in the petition for variance;
- 4) Allegations of any other facts the Agency believes relevant to the disposition of the petition, including any past or pending enforcement actions against petitioner;
- 5) The Agency's estimate of the costs that compliance would impose on the petitioner and on others;
- 6) The Agency's estimate of the injury that the grant of the variance would impose on the public including the effect that continued discharge of contaminants will have upon the environment;
- 7) The Agency's analysis of applicable federal laws and regulations and an opinion concerning the consistency of the petition with such federal laws and regulations;
- 8) The status of any permits or pending permit applications that are associated with or affected by the requested variance;
- 9) Allegation of any facts that the Agency believes are relevant to whether the Board should condition a grant of variance on the posting of a performance bond pursuant to Section 104.246 of this Part;
- 10) Citation to supporting documents or legal authorities whenever such are used as a basis for the Agency's recommendation. Relevant portions of such documents and legal authorities other than Board decisions, reported state and federal court decisions, state and federal regulations and statutes must be appended to the recommendation if not already in the record of the proceeding;
- 11) The Agency's recommendation of what disposition should be made of the petition, deny or grant, and suggested conditions. If the Agency recommends that variance be granted, a recommended beginning and end date of the requested variance, and any recommended conditions on the variance; and
- 12) An affidavit verifying any facts outside the record referenced in the recommendation.

**Section 104.218 Agency Recommendation to RCRA Variance**

In addition to the recommendation requirements stated in Section 104.216 of this Part, the Agency recommendation on petitions for RCRA variances must also include the following and, in addition to the service requirements Section 104.216 of this Part, the Agency must serve its recommendation on USEPA and all persons who have notified the Agency that they intend to comment or have otherwise asked to be served a copy of the recommendation.

- a) The recommendation must include a fact sheet or statement of basis as provided in 35 Ill. Adm. Code 705.141 through 705.143, where relevant.

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- b) If the Agency recommends that the variance be granted, a partial draft permit reflecting the variance and recommended conditions must be included with the recommendation.

**Section 104.220 Response to Agency Recommendation**

- a) Within 14 days after service of the Agency recommendation the petitioner may file a response to the Agency recommendation or an amended petition. The petitioner must serve a copy of the response or amended petition upon the hearing officer, the Agency, and any other parties to the proceeding.
- b) The response or amended petition may include a request for hearing. New information in a response or amended petition must be verified by oath or affidavit.
- c) Any amended petition or request for hearing under this Section recommends the decision period pursuant to Section 104.232 of this Subpart.

**Section 104.222 Stipulations**

Filing of a stipulation in a variance proceeding is permissible to the extent that the stipulation conveys to the Board those facts upon which the parties agree. However, the Board is not bound to accept as fact any stipulation to findings of ultimate fact or conclusion of law, such as, stipulating that it would impose an arbitrary or unreasonable hardship if petitioner were to immediately comply with the applicable rule or regulation.

**Section 104.224 Objections to Petition, Written Comments and Request for Hearing**

- a) A person who files an objection, request for hearing, or a comment is a "participant" as defined in 35 Ill. Adm. Code 101.Subpart B.
- b) Except as provided in subsection (e) of this Section for RCRA variances, any person may file with the Clerk, within 21 days after the publication of the Agency's notice pursuant to Section 104.214 of this Part, a written objection to the grant of variance. The Clerk will mail a copy of the objection to the petitioner, the Agency, the hearing officer, and any joined parties by First Class mail.
- c) Any person may also file a written request for hearing. The written request must be filed within 21 days after the publication of the Agency's notice pursuant to Section 104.214 of this Part in order for a hearing to be held in accordance with Section 104.236 of this Part and 35 Ill. Adm. Code 101.Subpart F.
- d) Any person may file written comments in a variance proceeding. If a hearing is held, public comments must be filed within 14 days after the close of the hearing unless the hearing officer specifies a

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different date. If there is no hearing, comments must be filed no later than 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. (See 35 Ill. Adm. Code 101.628(c)(1).)

e) In RCRA variances, subsection (b) and (c) of this Section do not apply. However, persons may file written comments within 45 days after the Agency files its recommendation.

**Section 104.226 Amended Petition and Amended Recommendation**

- a) The petitioner may amend the petition prior to the close of the hearing, if a hearing is held, or prior to the Board's decision, if a hearing is not held, by filing a motion pursuant to 35 Ill. Adm. Code 101.Subpart E. Amended petitions subsequent to hearing will be accepted only with leave of the Board. Amended petitions must be in writing and filed with the Board and served in accordance with 35 Ill. Adm. Code 101.Subpart C. The filing of an amended petition recommends the decision period, pursuant to Section 104.232 of this Part, and requires additional notice pursuant to Section 104.214 of this Part.
- b) If the petitioner amends the petition, the Agency must file or give an amended recommendation in writing or orally at hearing, but in any event not later than 30 days after the filing of an amended petition. The Agency may amend its recommendation even if the petitioner has not amended its petition. In such an instance, a recommendation may be amended prior to close of the hearing, if a hearing is held, or 40 days prior to the Board's decision date if a hearing is not held. The petitioner may file a response to an Agency recommendation pursuant to Section 104.220 of this Part.
- c) Written amendments to the petition or recommendation need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.

**Section 104.228 Insufficient Petition**

If the Board finds the petition fails to contain information as required by Sections 104.204, 104.206, and 104.208 of this Part, the Board may order the petitioner to supplement the information contained in the petition. Filings made in response to such order constitute an amended petition for the purposes of calculating the decision deadline pursuant to Section 104.232 of this Part. Alternatively, pursuant to Section 104.230 of this Part, the Board may dismiss the petition for lack of sufficient information. Failure of the Board to require supplemental information does not preclude a later finding that the information provided is insufficient to support grant of variance, or constitute a Board decision on the merits of the petition.

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**Section 104.230 Dismissal of Petition**

A petition is subject to dismissal if the Board determines that:

- a) The petition requests relief that the Board is not empowered to grant;
- b) The petition fails to comply with the requirements of 35 Ill. Adm. Code 101.Subpart C and Sections 104.202, 104.204, 104.206 and 104.208 of this Part;
- c) The petitioner fails to timely comply with any order issued by the Board or the hearing officer, including an order requiring additional information pursuant to Section 104.228 of this Part; or
- d) The petitioner is not subject to the rule or regulation, requirement, or order of the Board at issue.

**Section 104.232 Calculation of Decision Deadline**

- a) Pursuant to Section 38(a) of the Act the Board will render its final decision on the petition within 120 days after the date of filing of the petition, except:
  - 1) When the petitioner waives its right to a decision within the prescribed decision period in accordance with 35 Ill. Adm. Code 101.Subpart C;
  - 2) When the petitioner files an amended petition for variance pursuant to this Subpart or files a request for hearing after filing the original petition, the decision period recommences from the date of filing of the amended petition or the request for hearing; or
  - 3) When a hearing is canceled pursuant to 35 Ill. Adm. Code 101.510.
- b) Time will be computed in accordance with 35 Ill. Adm. Code 101.Subpart C.

**Section 104.234 Hearing**

The Board will order a hearing on a variance petition if:

- a) A hearing is requested by the petitioner at the time of initial filing on the associated form or in writing, which is filed and served in accordance with 35 Ill. Adm. Code 101.Subpart C;
- b) A hearing is requested in a response or amended petition;
- c) The Board, in its discretion, concludes that a hearing would be advisable (415 ILCS 5/37(a));
- d) The Agency or any other person files a written objection to the grant of such variance within 21 days after the publication of the Agency's notice pursuant to Section 104.214 of this Part, together with a written request for hearing; (415 ILCS 5/37(a));
- e) The variance request, if granted, would require an amendment to the State Implementation Plan for a criteria pollutant under the CAA; or
- f) The request concerns a RCRA variance.



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**Section 104.236 Hearing Procedures**

Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, except that:

- a) All hearings are to be held in the county where the petitioner's facility or pollution source is located unless otherwise ordered by the hearing officer (see 35 Ill. Adm. Code 101.600);
- b) Hearings may be canceled pursuant to a motion filed in accordance 35 Ill. Adm. Code 101.510 at the discretion of the hearing officer; and
- c) If all parties and participants who have requested a hearing pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board in its discretion deems it advisable.
- d) The hearing officer shall give notice of RCRA hearings to the following persons:
  - 1) Any person in the county in which the installation or property for which variance is sought is located who has in writing requested notice of variance petitions, the State's attorney of such county;
  - 2) The Chairman of the county board of such county;
  - 3) Each member of the General Assembly from the legislative district in which that installation or property is located;
  - 4) Federal agencies as designated by USEPA;
  - 5) Illinois Department of Transportation;
  - 6) Department of Natural Resources;
  - 7) Illinois Department of Public Health;
  - 8) The Governor or any other state adjacent to the county in which the facility or pollution source is located;
  - 9) Elected officials of any counties, in other states, adjacent to the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility or pollution source; and
  - 10) USEPA's Region V Director of Waste, Pesticides and Toxics Division.

**Section 104.238 Standard of Review**

- a) The Board may grant individual variances beyond the limitations prescribed by the Act, whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship. [415 ILCS 5/35(a)] The burden of proof in a variance proceeding is on the petitioner.
- b) In addition to subsection (a) of this Section the Board may grant a RCRA variance only to the extent consistent with, and with conditions

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**Section 104.240 Certificate of Acceptance**

no less stringent than, those that would be required by RCRA and 40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268, and 270. Variances must require compliance with the regulations in the shortest practicable time.

The petitioner's filing with the Board, which must be served on the Agency, will include a certificate of acceptance in all variances. The certificate constitutes acceptance of the variance and its conditions by the petitioner. A variance and its conditions are not binding upon the petitioner until the certificate is filed with the Board and served on the Agency. Failure to timely file the certificate with the Board and serve on the Agency renders the variance void. However, execution of the certificate is not necessary prior to seeking reconsideration pursuant to 35 Ill. Adm. Code 101.Subpart J, or appeal pursuant to Section 104.244 of this Part.

**Section 104.242 Term of Variance**

Except as provided by Section 38(a) of the Act, any variance granted pursuant to the provisions of this part shall be for such period of time, not exceeding five years, as shall be specified by the Board at the time of the grant of such variance, and upon the condition that the person who receives such variance shall make such periodic progress reports as the Board shall specify. Such variance may be extended from year to year by affirmative action of the Board, but only if satisfactory progress is shown. [415 ILCS 5/36(b)]

**Section 104.244 Variance Conditions**

In granting a variance the Board may impose such conditions as the policies of the Act may require. [415 ILCS 5/36(a)] In a RCRA variance the Board may direct the Agency to issue or modify a RCRA permit with conditions that may be set forth specifically in the order, or that may consist of general guidelines to be followed by the Agency, together with applicable regulations, in issuing a permit.

**Section 104.246 Performance Bonds**

If the hardship complained of consists solely of the need for a reasonable delay in which to correct a violation of this Act or of the Board regulations, the Board shall condition the grant of such variance upon the posting of sufficient performance bond or other security to assure the completion of the work covered by the variance. The original amount of such performance bond shall not exceed the reasonable cost of the work to be completed pursuant to the variance. The obligation under such bond shall at no time exceed the reasonable cost of work remaining pursuant to the variance. [415 ILCS 5/36(a)]

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## POLLUTION CONTROL BOARD

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**Section 104.248 Objection to Conditions**

*Notwithstanding this subsection, the Board may include such conditions in granting a variance and may adopt such rules and regulations as the policies of this Act may require. If an objection is made to a variance condition, the Board shall reconsider the condition within not more than 75 days from the date of the objection. [415 ILCS 5/41(b)]* An objection to a specific variance condition may be made by filing a motion pursuant to 35 Ill. Adm. Code 101.Subpart E, within 35 days after the receipt of the Board's opinion and order containing the objectionable condition.

**Section 104.250 Revocation**

The Board has the authority to, upon its own motion or upon a motion filed pursuant to 35 Ill. Adm. Code 101.Subpart E by petitioner, Agency or any person, revoke or vacate any variance or any condition of any variance. The Board will vacate or revoke a variance or any condition in a variance for reasons including non-compliance with the variance or any conditions of the variance. Upon petitioner's or the Agency's request, or upon its own motion, the Board will hold a hearing pursuant to 35 Ill. Adm. Code 101.Subpart F if necessary to determine whether the variance or any condition of a variance should be revoked or vacated.

## SUBPART C: PROVISIONAL VARIANCES

**Section 104.300 Applicability**

This Subpart applies to any person seeking a provisional variance pursuant to Title IX of the Act. This Subpart must be read in conjunction with 35 Ill. Adm. Code 101 and this Part. In the event of conflict between this Subpart and the Requirements of 35 Ill. Adm. Code 101, the requirements of this Subpart apply.

**Section 104.302 Board Action**

*The Board shall grant provisional variances only upon notification from the Agency that compliance on a short term basis with any rule or regulation, requirement or order of the Board, or with any permit requirement would impose an arbitrary or unreasonable hardship. Such provisional variances shall be issued within 2 working days of notification from the Agency. [415 ILCS 5/35(b)]*

**Section 104.304 Initiating a Request**

*Any person seeking a provisional variance pursuant to Section 104.401 of this Part shall make a request to the Agency. The Agency shall promptly investigate*

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*and consider the merits of the request. The Agency may notify the Board of its recommendation. If the Agency fails to take final action within 30 days after receipt of the request, the person may initiate a variance proceeding pursuant to Section 104.120 of this Part. [415 ILCS 5/37(b)]*

**Section 104.306 Notice**

*The Board shall give prompt notice of its action on provisional variance requests to the public by issuing a press release for distribution to newspapers of general circulation in the county. [415 ILCS 5/37(b)]*

**Section 104.308 Term**

*Any provisional variance granted by the Board pursuant to subsection (b) of Section 35 shall be for a period of time not to exceed 45 days. Upon receipt of a recommendation from the Agency to extend this time period, the Board shall grant up to an additional 45 days. The provisional variances granted to any one person shall not exceed a total of 90 days during any calendar year. [415 ILCS 5/36(c)]*

**Section 104.310 Simultaneous Variance Prohibition**

The Board will not grant a provisional variance pursuant to this Subpart to the extent that the petitioner holds a variance pursuant to Subpart B of this Part from the same regulation or order of the Board for the same time period.

## SUBPART D: ADJUSTED STANDARDS

**Section 104.400 General**

a) Description. An adjusted standard has the effect of an environmental regulation that would apply to petitioner, if granted, in lieu of the general regulation that would otherwise be applicable to a petitioner and the regulated community.

b) Applicability. This Subpart will apply to any person seeking an adjusted standard pursuant to Section 28.1 of the Act. This includes an adjusted standard sought pursuant to 35 Ill. Adm. Code 212.126 (CAA) and 35 Ill. Adm. Code 700 through 750 (RCRA). This Subpart must be read in conjunction with 35 Ill. Adm. Code Part 101 which contains procedures generally applicable to all adjudicatory proceedings before the Board. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Subpart, the provisions of this Subpart apply.

**Section 104.402 Initiation of Proceeding**

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A person may initiate an adjusted standard proceeding by filing a petition that meets the requirements of Section 104.406 of this Part. A petition for an adjusted standard (petition) may be filed either jointly with the Agency or singly pursuant to the filing requirements of 35 Ill. Adm. Code 101. If filed singly the petitioner shall also serve the petition upon the Agency in accordance with 35 Ill. Adm. Code 101. Additionally, a person may file a petition and request the Agency to join as a co-petitioner as set forth in Section 104.404 of this Part.

**Section 104.404 Request to Agency to Join as Co-Petitioner**

- a) The Agency may, in its discretion, act as a co-petitioner in any adjusted standard proceeding.
- b) Any person may request Agency assistance in initiating a petition for adjusted standard. The Agency may require the person to submit to the Agency any background information in the person's possession relevant to the adjusted standard which is sought. The Agency shall promptly notify the person in writing of its determination either to join as a co-petitioner, or to decline to join as a co-petitioner. If the Agency declines to join as a co-petitioner, the Agency must state the basis for this decision.
- c) Discretionary decisions made by the Agency pursuant to this Section are not appealable to the Board.
- d) Subsequent to the filing of the petition and prior to hearing, the Board will grant the Agency co-petitioner status upon joint motion of the Agency and the petitioner who originally filed the petition.

**Section 104.406 Petition Content Requirements**

If the Agency is a co-petitioner, the petition must so state. The petition must contain headings corresponding to the informational requirements of each subsection of this Section. If the petitioner believes that any of the informational requirements are not applicable to the specific adjusted standard requested, the petitioner must so state and explain his reasoning. The following information must be contained in the petition:

- a) A statement describing the standard from which an adjusted standard is sought. This must include the Illinois Administrative Code citation to the regulation of general applicability imposing the standard as well as the effective date of that regulation;
- b) A statement that indicates whether the regulation of general applicability was promulgated to implement, in whole or in part, the requirements of the CWA (33 USC 1251 et seq.), Safe Drinking Water Act (42 U.S.C. 300(f) et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601 et seq.), CAA (42 USC 7401 et seq.), or the State programs concerning RCRA, UIC, or NPDES (415 ILCS 5/28.1);

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- c) The level of justification as well as other information or requirements necessary for an adjusted standard as specified by the regulation of general applicability or a statement that the regulation of general applicability does not specify a level of justification or other requirements [415 ILCS 5/28.1] (See Section 104.426);
- d) A description of the nature of the petitioner's activity that is the subject of the proposed adjusted standard. The description must include the location of and area affected by the petitioner's activity. This description must also include the number of persons employed by the petitioner's facility at issue, age of that facility, relevant pollution control equipment already in use, and the qualitative and quantitative description of the nature of emissions, discharges or releases currently generated by the petitioner's activity;
- e) A description of the efforts that would be necessary if the petitioner were to comply with the regulation of general applicability. All compliance alternatives, with the corresponding costs for each alternative, must be discussed. The discussion of costs must include the overall capital costs as well as the annualized capital and operating costs;
- f) A narrative description of the proposed adjusted standard as well as proposed language for a Board order that would impose the standard. Efforts necessary to achieve this proposed standard and the corresponding costs must also be presented;
- g) The quantitative and qualitative description of the impact of the petitioner's activity on the environment if the petitioner were to comply with the regulation of general applicability as compared to the quantitative and qualitative impact on the environment if the petitioner were to comply only with the proposed adjusted standard. To the extent applicable, cross-media impacts must be discussed. Also, the petitioner must compare the qualitative and quantitative nature of emissions' discharges or releases that would be expected from compliance with the regulation of general applicability as opposed to that which would be expected from compliance with the proposed adjusted standard;
- h) A statement which explains how the petitioner seeks to justify, pursuant to the applicable level of justification, the proposed adjusted standard;
- i) A statement with supporting reasons that the Board may grant the proposed adjusted standard consistent with federal law. The petitioner must also inform the Board of all procedural requirements applicable to the Board's decision on the petition that are imposed by federal law and not required by this Subpart. Relevant regulatory and statutory authorities must be cited;
- j) A statement requesting or waiving a hearing on the petition (pursuant to Section 104.422(a)(4) of this Part a hearing will be held in all

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petitions for adjusted standards filed pursuant to 35 Ill. Adm. Code 212.126 (CAAI):

- k) The petition must cite to supporting documents or legal authorities whenever such are used as a basis for the petitioner's proof. Relevant portions of such documents and legal authorities other than Board decisions, State regulations, statutes, and reported cases must be appended to the petition;
- l) Any additional information which may be required in the regulation of general applicability.

**Section 104.408 Petition Notice Requirements**

- a) *The petitioner shall submit to the Board proof that, within 14 days after the filing of the petition, it has published notice of the filing of the petition by advertisement in a newspaper of general circulation in the area likely to be affected by the petitioner's activity that is the subject of the adjusted standard proceeding.* [415 ILCS 5/28.1.]

- b) The title of the notice must be in the form as follows: "Notice of Petition by [petitioner's name] for an Adjusted Standard before the Illinois Pollution Control Board." The notice must contain the name and address of the petitioner and the statement that the petitioner has filed with the Board a petition for an adjusted standard. The notice must also provide the date upon which the petition was filed, the Board docket number, the regulatory standard (with appropriate Administrative Code citation) from which an adjusted standard is sought, the proposed adjusted standard, and a general description of the petitioner's activity that is the subject of the adjusted standard proceeding, and the location of that activity. This information must be presented so as to be understood in accordance with the context of this Section's requirements. The concluding portion of the notice must read as follows:

"Any person may cause a public hearing to be held in the above-described adjusted standard proceeding by filing a hearing request with the Illinois Pollution Control Board within 21 days after the date of the publication of this notice. The hearing request should clearly indicate the docket number for the adjusted standard proceeding, as found in this notice, and must be mailed to the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601."

**Section 104.410 Proof of Petition Notice Requirements**

Within 30 days after the filing of the petition, the petitioner must file a certificate of publication, issued by the publisher of the petition notice certifying the publication of that notice. The certificate must be issued in

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accordance with Section 1 of "Notice by Publication Act" [715 ILCS 5/1].

**Section 104.412 Effect of Filing a Petition: Stay**

- a) If any person files a petition for an individual adjusted standard in lieu of complying with the applicable regulation within 20 days after the effective date of the regulation, the operation of the regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any regulation shall not be stayed if that regulation was adopted by the Board to implement, in whole or in part, the requirements of the federal Clean Air Act, Safe Drinking Water Act or Comprehensive Environmental Response, Compensation, and Liability Act, or the State RCRA, UIC or NPDES programs. [415 ILCS 5/28.1(e)]
- b) Within 20 days after the effective date of any regulation that implements in whole or in part the requirements of the Clean Air Act, if any person files a petition for an individual adjusted standard in lieu of complying with the regulation, such source will be exempt from the regulation until the Board makes a final determination on the petition. If the regulation adopted by the Board from which the individual adjusted standard is sought replaces a previously adopted Board regulation, the source shall be subject to the previously adopted Board regulation until final action is taken by the Board on the petition. [415 ILCS 5/28.1(f)]

**Section 104.414 Dismissal of Petition**

The Board may at any time dismiss a petition for any of the following reasons:

- a) The Board determines that the petition is frivolous, duplicative, or deficient with respect to the requirements of Section 104.406, 104.408, and 104.410 of this Part; or
- b) The Board determines that the petitioner is not pursuing disposition of the petition in a timely manner.

**Section 104.416 Agency Recommendation and Petitioner Response**

- a) Unless otherwise ordered by the hearing officer, the recommendation must be filed with the Board within 45 days after the filing of the petition or amended petition. If a hearing has been scheduled, the recommendation must be filed at least 30 days before hearing. The recommendation must set forth the rationale for the Agency's position and may present any information which the Agency believes is relevant to the Board's consideration of the proposed adjusted standard. If the Agency recommends a denial of the petition due to informational deficiencies within the petition, the recommendation must identify the types of information needed to correct the deficiencies.

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- b) At a minimum, the Agency must address and respond to the petition with respect to each issue raised by the requirements of subsections (a) through (j) of Section 104.406 of this Part.
- c) The recommendation must cite to supporting documents or legal authorities whenever such are used as a basis for the Agency's conclusion. Relevant portions of such documents and legal authorities other than Board decisions, State regulations, statutes and reported cases must be appended to the recommendation if not already in the record of the proceeding.
- d) The petitioner may file a response to the recommendation within 14 days after the date of service of the recommendation.

**Section 104.418 Amended Petition, Amended Recommendation, and Amended Response**

- a) Amended Petition. The petitioner may amend its petition at any time. Such an amendment must be in writing and filed with the Board unless made orally at hearing. If the petitioner amends the petition such that the amendment is a substantive change to the requested relief in that it requests additional or alternative relief, petitioner must re-notice the amended petition pursuant to Section 104.406 of this Part.
- b) Amended Recommendation. The Agency may amend its recommendation at any time, even if the petitioner has not amended its petition, if such amendment does not cause material prejudice. Such an amendment must be in writing and filed with the Board unless made orally at hearing.
- c) Amended Response. The petitioner may file a reply to a written amended recommendation within 14 days after the date of receipt of the amended recommendation or within 14 days after the hearing when the Agency orally amended its recommendation.
- d) Written amendments to the petition or recommendations need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.

**Section 104.420 Request for Public Hearing**

- a) Any person can request that a public hearing be held in an adjusted standard proceeding. Such requests must be filed not later than 21 days after the date of the publication of the petition notice in accordance with subsections (a) and (b) of Section 104.408 of this Part. Requests for hearing should make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be mailed to the petitioner and Agency by the Clerk of the Board. Participation by the public at such hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628.
- b) Where all parties and participants who have requested a hearing

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pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board in its discretion deems it advisable.

**Section 104.422 Public Hearing**

- a) A public hearing will be held and the Board will assign a hearing officer to an adjusted standard proceeding when:
  - 1) The petitioner requests a hearing be held; or
  - 2) The Board receives a hearing request by any person pursuant to Section 104.420 of this Part, not later than 21 days after the date of the publication of the petition notice in accordance with Section 104.408 of this Part; or
  - 3) The Board in its discretion determines that a hearing would be advisable. [415 ILCS 5/28.1]; or
  - 4) The adjusted standard is sought pursuant to 35 Ill. Adm. Code 212.126 (CAA).
- b) The hearing officer will set a time and place for the hearing. The hearing officer will make an attempt to consult with the petitioner and the Agency prior to the scheduling of a hearing. Hearings are to be held in the county likely to be affected by the petitioner's activity that is the subject of the proposed adjusted standard.

**Section 104.424 Hearing Notice**

After receiving notification from the hearing officer of the scheduled hearing date made pursuant to Section 104.422 of this Part, the Clerk will cause the publication of a hearing in accordance with Section 28.1 of the Act and 35 Ill. Adm. Code 101. [415 ILCS 5/28.1]

**Section 104.426 Burden of Proof**

The burden of proof in an adjusted standard proceeding is on the petitioner. A petitioner must justify an adjusted standard consistent with subsection (a) of Section 27 of the Act.

- a) If the regulation of general applicability does not specify a level of justification required of a petitioner to qualify for an adjusted standard, the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, that:
  - 1) factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;
  - 2) the existence of those factors justifies an adjusted standard;
  - 3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general

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*applicability; and*

- 4) *the adjusted standard is consistent with any applicable federal law [415 ILCS 5/28.1(c)].*
- 5) *If the regulation of general applicability specifies a level of justification for an adjusted standard, the Board may adopt the proposed adjusted standard, if the petitioner proves the level of justification specified by the regulation of general applicability.*

**Section 104.428 Board Action**

- a) In adopting adjusted standards the Board may impose such conditions as may be necessary to accomplish the purposes of the Act.
- b) Subsequent to the Board's adoption of an adjusted standard, the Board will publish, in the Environmental Register, the name of the petitioner, date of the Order that adopted the adjusted standard, and a brief narrative description of the adopted adjusted standard.
- c) *Board orders and opinions shall be maintained for public inspection by the Clerk of the Board and a listing of all determinations made pursuant to Section 28.1 of the Act shall be published in the Illinois Register and the Environmental Register at the end of each fiscal year. [415 ILCS 5/28.1(d)]* Board opinions and orders will also be available from the Board's Web site.

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1) Heading of the Part: Variances

2) Code citation: 35 Ill. Adm. Code 104

Proposed Action:Section Numbers:

104.102 Repeal  
 104.103 Repeal  
 104.104 Repeal  
 104.120 Repeal  
 104.121 Repeal  
 104.122 Repeal  
 104.123 Repeal  
 104.124 Repeal  
 104.125 Repeal  
 104.126 Repeal  
 104.140 Repeal  
 104.141 Repeal  
 104.142 Repeal  
 104.160 Repeal  
 104.180 Repeal  
 104.181 Repeal  
 104.182 Repeal  
 104.183 Repeal  
 104.200 Repeal  
 104.201 Repeal  
 104.202 Repeal  
 104.220 Repeal  
 104.221 Repeal  
 Appendix A Repeal

4) Statutory authority: 415 ILCS 5/5, 26, 27, 36, 37, and 38 of the Environmental Protection Act [415 ILCS 5/5, 26, 27, 36, and 38].

5) A complete description of the subjects and issues involved: The Board's rulemaking docket R00-20 proposes to repeal all of the Board's existing procedural rules, and adopt new procedural rules at Parts 101-108, Part 125 and Part 130.

6) Will these proposed rules replace emergency rules currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed rules contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No



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10) Statement of statewide policy objectives: While this proposed repealer does not impose a State mandate, the proposed new Part 104 imposes procedural mandates on units of local government to the extent they may appear before the Board.

11) Time, place and manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal until June 1, 2000. Comments should reference Docket R00-20 and be addressed to:

Clerk's Office  
Illinois Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601  
Phone#: 312/814-6931

Request copies of the Board's opinion and order from Patricia Jones, at 312-814-3620 or download from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

12) Initial regulatory flexibility analysis:

A) Types of small businesses, small municipalities, and not-for-profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: January 2000

The full text of the proposed repealer begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

## PART 104

## VARIANCES (REPEALED)

## SUBPART A: GENERAL PROVISIONS

Section  
104.102 Variance from New Regulation  
104.103 References  
104.104 RCRA Variances

## SUBPART B: PETITION FOR VARIANCE

Section  
104.120 Petition for Variance  
104.121 Contents of Variance Petition  
104.122 Consistency with Federal Law  
104.123 Extension of Prior Variance  
104.124 Hearing Request or Waiver; Affidavit  
104.125 Dismissal for Inadequacy  
104.126 RCRA Variances: Additional Material

## SUBPART C: NOTICE AND OBJECTIONS

Section  
104.140 Notice of Petition  
104.141 Objections to Petition  
104.142 RCRA Variances: Notice of Filing of Petition

## SUBPART D: AUTHORIZATION OF HEARINGS

104.160 Board Action on Petitions for Variance and Authorization of Hearing

## SUBPART E: RECOMMENDATION AND RESPONSE

Section  
104.180 Agency Investigation and Recommendation  
104.181 Response or Amended Petition  
104.182 RCRA Variances: Additional Information in Recommendation  
104.183 RCRA Variances: Public Comment

## SUBPART F: HEARINGS

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## Section 104.200

Notice of Hearing

104.201

Proceedings

104.202

Transcripts

## SUBPART G: FINAL ACTION

104.220

Decision

104.221

RCRA Variances: Board Decision

## APPENDIX A Old Rule Numbers Referenced

**AUTHORITY:** Implementing Sections 5, 35, 36, 37 and 38 and authorized by Section 26 of the Environmental Protection Act (Ill. Rev. Stat. 1963, ch. 111 1/2, pars. 1005, 1035, 1036, 1037, 1038 and 1026).

**SOURCE:** Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1, 1978; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 16, p. 3, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1409, effective January 16, 1985; Part repealed in R00-20 at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 104.102 Variance from New Regulation

If any person files a petition for variance from a regulation within 20 days after the effective date of such regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition. The Board may hold a hearing upon the petition five days from the notice of such hearing, and in all other respects the rules in this Part shall apply to the extent they are consistent with the hearing date set by the Board.

## Section 104.103 References

Unless the contrary is clearly indicated, all references to "Parts" or "Sections" are to Illinois Administrative Code, Title 35: Environmental Protection. For example, "Part 309" is 35 Ill. Adm. Code 309, and "Section 309.101" is 35 Ill. Adm. Code 309.101.

## Section 104.104 RCRA Variances

- a) As used in this Part, "petition for a RCRA variance" shall mean any

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pleading which meets either, or both, of the following criteria:

- 1) It requests a variance from 35 Ill. Adm. Code 703, 720, 721, 722, 723, 724 or 725; or,
- 2) It asks that the Board order the Agency to issue or modify any provision of a RCRA permit required pursuant to Section 21(f) of the Act.
- b) The federal RCRA rules contain procedures which are referred to as "variances" (40 CFR 260, 261, 262, 263, 264, 265 and 270 (1984)). The petitioner should consult the comparable Board regulations to decide whether the variance procedures of this Part need to be followed. As provided in Title IX of the Act and Section 104.160(f), the Board may grant a temporary variance. The Board may grant permanent relief from a rule pursuant to 35 Ill. Adm. Code 102. Pursuant to 35 Ill. Adm. Code 105 a permit applicant may request Board review of the Agency's denial of a permit or issuance with conditions.

## SUBPART B: PETITION FOR VARIANCE

## Section 104.120 Petition for Variance

A variance proceeding shall be commenced by any person by filing a petition for variance with the Agency and simultaneously filing 10 copies with the Clerk of the Board. All additional information or amendments to the petition for variance shall be filed with the Agency and Board in the same manner as that required for commencing the action.

## Section 104.121 Contents of Variance Petition

To enable the Board to rule on the petition for variance, the following information, where applicable, shall be included in the petition:

- a) A clear and complete statement of the precise extent of the relief sought, including specific identification of the particular provisions of the regulations or Board order from which the variance is sought;
- b) A description of the business or activity of the petitioner including the size of the business and number of employees and a description of the location and area affected by petitioner's operations;
- c) The quantity and types of materials used in the process or activity for which the variance is required and a full description of the particular process or activity in which the materials are used;
- d) The quantity and types of materials discharged from the process or activity requiring the variance; the location of the points of discharge, and, as applicable, the identification of the receiving waterway or land, or the location of the nearest air monitoring station maintained by the Agency;
- e) Data describing the nature and extent of the present failure to meet the numerical standards or particular provisions from which the

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variance is sought and a factual statement why compliance with the Act and regulations was not or cannot be achieved by the required compliance date;

- f) A detailed description of the existing and proposed equipment or proposed method of control to be undertaken to achieve full compliance with the Act and regulations, including a time schedule for the implementation of all phases of the control program from initiation of design to program completion and the estimated costs involved for each phase and the total cost to achieve compliance;
- g) An assessment, with supporting factual information, of the environmental impact that the variance will impose on human, plant, and animal life in the affected area, including, where applicable, data describing the existing air and water quality which the discharge may affect;
- h) Past efforts to achieve compliance including costs incurred, results achieved, permit status, and, for publicly-owned treatment works or connections status, construction grant status;
- i) A discussion of the availability of alternate methods of compliance, to the extent that such methods were studied, and the comparative factors leading to the selection of the control program proposed to achieve compliance;
- j) A statement of the measures to be undertaken during the period of the variance to minimize the impact of the discharge of contaminants on human, plant, and animal life in the affected area, including the numerical interim discharge limitations which can be achieved during the period of the variance;
- k) A concise factual statement of the reasons the petitioner believes that compliance with the particular provisions of the regulations or Board Order would impose an arbitrary or unreasonable hardship; and
- l) Such other things as are required in this Subpart.

## Section 104.122 Consistency with Federal Law

- a) All petitions for variances from Title II of the Act or from 35 Ill. Adm. Code, Subtitle B, Ch. I (Air Pollution), shall indicate whether the Board may grant the requested relief consistent with the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal regulations adopted pursuant thereto. If granting a variance would constitute issuance of a delayed compliance order as that term is defined in 40 CFR 65.01(e), the petition shall indicate whether the requested relief is consistent with Section 113(d) of the Clean Air Act and 40 CFR 65.01-65.10 and Implementation Plan, the petition shall indicate whether the requirements of Section 110(a) of the Clean Air Act and 40 CFR 51 will be satisfied.
- b) All petitions for variances from Title III of the Act; from 35 Ill.

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Adm. Code, Subtitle C, Ch. I; or from water pollution related requirements of any other title of the Act or chapter of the Board's Regulations shall indicate whether the Board may grant the relief consistent with the Clean Water Act (33 U.S.C. 1251), U.S.E.P.A. effluent guidelines and standards, any other Federal regulations, or any araiside waste treatment management plan approved by the Administrator of U.S.E.P.A. pursuant to Section 208 of the Clean Water Act.

- c) All petitions for variances from Title IV of the Act or from 35 Ill. Adm. Code, Subtitle F, Ch. I (Public Water Supplies), shall indicate whether the Board may grant the relief consistent with the Safe Drinking Water Act (42 U.S.C. 300(f) et seq.) and the U.S.E.P.A. National Interim Primary Drinking Water Regulations (40 CFR 141).
  - d) The petition may include an analysis of applicable Federal law, and legal arguments and facts which may be necessary to show compliance with Federal law. If it does not and petitioner subsequently files a pleading containing such, it will be deemed an amended petition, thereby restarting the decision period. However, petitioner may, pursuant to Section 104.181, file a response to the Agency's analysis of Federal laws without amending the petition.
  - e) All petitions for RCRA variances shall include a showing that the Board can grant the requested relief consistent with, and establish RCRA permit conditions no less stringent than, that which would be required by the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (P.L. 94-580, as amended by P.L. 95-609, 42 U.S.C. 6901 et seq.), and the regulations thereunder promulgated by the United States Environmental Protection Agency (40 CFR 260, 261, 262, 263, 264, 265 and 270 (1984)). Such petitions shall indicate whether any Federal provisions authorize the relief requested, and shall include any facts necessary to show that the petitioner would be entitled to the requested relief pursuant to Federal law.
- Section 104.123 Extension of Prior Variance**
- a) A petition to extend a prior variance granted by the Board shall be commenced by filing a petition for variance with the Agency and the Board in accordance with the requirements of Sections 104.120 and 104.121. To the extent that the information required by Sections 104.120 and 104.121 has been included in the prior petition for variance for which extension is sought, a resubmission of that information shall not be required provided that the petition shall request the incorporation of the record, opinion and order in the prior proceeding into the new petition.
  - b) A petition to extend a prior variance shall be a new petition for variance before the Board and shall be subject to all of the

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requirements of this Part except as provided in subsection (a).

**Section 104.124 Hearing Request or Waiver; Affidavit**

The petition shall contain a request for a hearing on the petition if desired by petitioner; or, in the alternative, a statement waiving a hearing, accompanied by such affidavits or other proof in support of the material facts alleged in the petition as the petitioner may submit, sufficient to enable the Board, if it so decides, to rule upon the petition without a hearing. In the event that a hearing on the variance petition has been waived by the petitioner, and no hearing is held, the petition for variance, the Agency recommendation, and any amendments or responses thereto shall constitute the entire record in the proceeding and the decision of the Board shall be rendered after consideration of the record except that the Board may take official notice of prior regulatory proceedings and opinions of the Board in adopting the regulations or orders of the Board from which the variance is sought.

**Section 104.125 Dismissal for Inadequacy**

The failure to satisfy the requirements of this Subpart, to the extent that the Board is not reasonably informed of petitioner's circumstances, will render the petition for variance subject to dismissal for inadequacy, unless the Board shall rule otherwise.

**Section 104.126 RCRA Variances: Additional Material**

- a) The petitioner must clearly identify a petition for a RCRA variance as such.
- b) Persons who have, or are required to have, a RCRA permit and who seek a RCRA variance which could result in modification or issuance of the RCRA permit must have on file with the Agency a RCRA permit application reflecting the requested variance prior to filing the variance petition.
- c) Petitioner shall attach to the variance petition a copy of the RCRA permit application, or such portion as may be relevant to the variance request.
- d) Petitioner shall attach to the variance petition proof of service on USEPA as required by Section 104.142.

**SUBPART C: NOTICE AND OBJECTIONS****Section 104.140 Notice of Petition**

- a) The Board shall give notice of all variance petitions to all persons on its mailing list through publication of notice of the petition in the Board's Environmental Register in the first publication of the

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Environmental Register after the Board has considered the petition in accordance with Section 104.160(b).

- b) The Agency shall give written notice of all variance petitions to any person in the county in which the installation or property is located for which the variance is sought who has in writing to the Agency requested notice of variance petitions, the State's Attorney of such county, the Chairman of the County Board of such county, and to each member of the General Assembly from the legislative district in which the installation or property is located and to other persons as required by law. Within 10 days after the petition is filed, the Agency shall publish notice of such petition in a newspaper of general circulation in the county in which the installation or property is located for which the variance is sought.

**Section 104.141 Objections to Petition**

- a) Any person may file with the Clerk, within 21 days after the filing of the petition, a written objection to the grant of the variance. Such objection may or may not be accompanied by a petition to intervene in accordance with Section 103.220. A copy of such objection shall be mailed to the petitioner and the Agency by the Clerk.
- b) Paragraph (a) does not apply to RCRA variances. Sections 104.183 and 104.200 provide for public comment and a public hearing on all such petitions.

**Section 104.142 RCRA Variances: Notice of Filing of Petition**

- a) Any petition requesting a RCRA variance shall not be deemed filed until proof of service has been filed with the Board. Petitioner shall serve the United States Environmental Protection Agency a copy of any petition requesting a RCRA variance at the following address:  
Director, Waste Management Division  
USEPA, Region V  
230 South Dearborn Street  
Chicago, IL 60604
- b) In addition to the requirements of Section 37 of the Act and Section 104.140, the Agency at a minimum shall give notice of the filing of a petition for a RCRA variance to the following persons:
  - 1) Federal agencies as designated by the United States Environmental Protection Agency;
  - 2) Illinois Department of Transportation;
  - 3) Illinois Department of Conservation;
  - 4) Illinois Department of Energy and Natural Resources;
  - 5) Illinois Department of Public Health;
  - 6) The Governor of any other State adjacent to the County in which the facility is located;



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- 7) Elected officials of any counties, in other states, adjacent to the County in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.

- c) In addition to the methods of notice by publication of Section 104.140, the Agency shall give notice by broadcast over at least one local radio station in the area of the facility containing the information required by paragraphs (d)(2) and (d)(4) through (d)(7).
- d) The notices required by paragraphs (b) and (c) shall be accomplished within the time limit established by Section 104.140(b).
- e) A notice of the filing of a petition for a RCRA variance shall include the following information:

- 1) The address of the Board office;
- 2) Name and address of the petitioner and, if different, of the facility for which the variance is sought;
- 3) A brief description of the business conducted at the facility and the activity described in the petition;
- 4) Name, address and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the variance petition; and
- 5) A statement that the Agency is preparing a recommendation, the date on which the recommendation is to be filed, and the name, address and telephone number of the Agency employee responsible for the recommendation;
- 6) A statement that a hearing will be held after the filing of the recommendation, and that the record will remain open for written comments for 45 days after filing of the recommendation. The notice will include the address of the Board to which comments shall be mailed;
- 7) A statement that the record in the variance proceeding is available at the Board office for inspection, except those portions which are claimed to be trade secrets, and that procedures are available whereby disclosure may be sought by the public.
- 8) A statement that variances may be granted pursuant to Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1035 et seq. and 35 Ill. Adm. Code 104, and a reference to the Board regulations or order from which a variance is sought.
- 9) Any additional information considered necessary or proper.

## SUBPART D: AUTHORIZATION OF HEARINGS

## Section 104.160 Board Action on Petitions for Variance and Authorization of Hearing

- a) The Clerk shall assign a docket number to each petition filed, deposit

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the petition in the Board's files, and distribute copies to each Board Member. Copies of objections to the petition, amendments, the Agency's recommendations and responses to the recommendation shall be filed and distributed as received.

- b) All petitions for variance shall be placed on the Board agenda and the Board will authorize one or more of the following actions, as they shall determine:

- 1) The petition may be dismissed if the Board determines that it is not adequate under Subpart B or the Act; or,
  - 2) The Board may enter an order for additional information in support of the petition; or,
  - 3) The Board may accept the petition and defer decision until an Agency recommendation has been served upon the petitioner and filed with the Board; or,
  - 4) The Board may authorize a hearing on the petition.
- c) The Board shall authorize a hearing on any petition for variance, determined to be an adequate petition by the Board, in any of the following circumstances:
- 1) When a hearing is requested by the petitioner on filing the petition in accordance with Section 104.124; or,
  - 2) When an objection to the variance has been filed within 21 days after the filing of the petition in accordance with Section 104.141; or,
  - 3) When a petition for a RCRA variance has been filed; or,
  - 4) After a hearing is requested by an amended petition within 7 days after receipt of the Agency recommendation by the petitioner in accordance with Section 104.181(b).
- d) When a hearing has been authorized by the Board pursuant to subsections (b)(4) or (c), the Chairman shall designate a Hearing Officer in accordance with Section 103.181(b).
- e) If no hearing has been authorized pursuant to subsections (b)(4) or (c), the Board shall act within 90 days of the filing of the petition and shall prepare an opinion stating reasons supporting the grant or denial of the petition, except that the Board shall not act to grant or deny any petition until after 21 days have elapsed from the date of filing. The decision period on RCRA, UIC and NPDES variances is as provided in Section 38(c) of the Act.
- f) No variance shall be granted, with or without hearing, without a showing by affidavits or other adequate proof by the petitioner that compliance with the regulations or Board order would impose an arbitrary or unreasonable hardship upon the petitioner.

## SUBPART E: RECOMMENDATION AND RESPONSE

## Section 104.180 Agency Investigation and Recommendation

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a) After investigating the variance petition and considering the views of persons who might be adversely affected by the grant of the variance, the Agency shall within 30 days of the filing of the petition or any amendment thereto make a recommendation to the board on the disposition of the petition. The recommendation shall include:

- 1) A description of the efforts made by the Agency to investigate the facts as alleged and to ascertain the views of persons who might be affected and a summary of the views so ascertained;
  - 2) A statement of the degree to which, if at all, the Agency disagrees with the facts as alleged in the petition, including facts refuting any allegations in the petition for variance;
  - 3) Allegations of any other facts the Agency believes relevant to the disposition of the petition;
  - 4) The Agency's estimate of the costs that compliance would impose on the petitioner and on others and of the injury that the grant of the variance would impose on the public including the effect that continued discharge of contaminants will have upon the environment;
  - 5) The Agency's analysis of applicable federal laws and regulations and an opinion concerning the consistency of the petition with such federal laws and regulations; and
  - 6) The Agency's conclusion of what disposition should be made of the petition.
- b) The Agency shall serve a copy of its recommendation on the petitioner in accordance with Section 103.123(b). Failure of the Agency to timely file its recommendation shall be grounds for the Hearing Officer to adjourn the hearing to a date which will allow reasonable time to prepare.

**Section 104.181 Response or Amended Petition**

Within 7 days after receipt of the Agency Recommendation, the petitioner may:

- a) File with the Board a response to any Agency recommendation and a copy shall be served upon the Agency; or,
- b) File an amended petition for variance in accordance with Section 104.121, requesting that the matters be set for hearing. The Board shall authorize the matter for hearing and render a final decision within 90 days after the filing of the amended petition.

**Section 104.182 RCRA Variances: Additional Information in Recommendation**

- a) This section shall apply to Agency recommendations on petitions for RCRA variances in addition to the provisions of Section 104.180.
- b) The Agency shall file its recommendation with the Board within 30 days after the petition is filed.

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- c) The recommendation shall include a fact sheet or statement of basis as provided in 35 Ill. Adm. Code 705.141 through 705.143, insofar as relevant to the variance requested.
- d) If the Agency recommends that the variance be granted, a partial draft permit reflecting the variance and recommended conditions shall be included with the recommendation.
- e) If the Agency recommends that the variance be denied, a notice of intent to deny shall be included with the recommendation.
- f) The Agency shall serve its recommendation on the United States Environmental Protection Agency and all persons who have notified the Agency that they intend to comment or have otherwise asked to be served a copy of the recommendation.

**Section 104.183 RCRA Variances: Public Comment**

- a) Any person, including the United States Environmental Protection Agency, may comment in writing within 45 days after the Agency files its recommendation.
- b) Comment may be on both the petition for a RCRA variance and on the recommendation.
- c) The Board will mail copies of any written comment to the petitioner, the Agency and the United States Environmental Protection Agency, unless the person filing the comment files a proof of service on the persons entitled to copies.

## SUBPART F: HEARINGS

**Section 104.200 Notice of Hearing**

- a) The Hearing Officer, after appropriate consultation with the parties, shall set a time and place for hearing to be held within 60 days of the filing of the petition.
- b) The Hearing Officer shall give notice of the hearing in accordance with 35 Ill. Adm. Code 103.123(b), at least 21 days before the hearing to the petitioner, the Agency, and anyone who has filed an objection to the petition.
- c) The Clerk shall publish the time and place of the hearing in the Board's Environmental Register in the first publication of the Environmental Register after the Hearing Officer shall have set the date for hearing.
- d) Notice of hearings on petitions for RCRA variances shall be subject to the following provisions instead of paragraphs (a), (b) and (c):
  - 1) The Hearing Officer, after appropriate consultation with the parties, shall set a time and place for the hearing to be held not less than 30 days after the filing of the recommendation. The Hearing Officer may give notice of any hearing prior to the

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actual filing of the recommendation. If the recommendation is actually filed less than 30 days before the scheduled date of the hearing, the Hearing Officer shall reschedule the hearing and give public notice again.

- 2) The hearing shall be held in the County in which the facility is located, in the population center in such county closest to the facility.
- 3) The Hearing Officer shall give notice of the hearing to the persons entitled to notice in Sections 104.140 and 104.142, and to any other persons who have commented, requested to comment or requested notice.
- 4) Notice shall be mailed not less than 30 days before the hearing.

## Section 104.201 Proceedings

- a) Proceedings upon a petition for variance shall be in accordance with Part 103, except as otherwise provided in this Part.
- b) In a hearing on the petition for variance the burden of proof shall be on the petitioner and it shall be the duty of the petitioner, at hearing, to prove each material fact alleged in the petition for variance.

## Section 104.202 Transcripts

- a) In any proceeding brought pursuant to this Part, where a hearing has been authorized by the Board, the petitioner at its own cost shall furnish to the Board within 15 days following the completion of the hearing seven legible copies of a complete stenographic transcript of the proceedings of the hearing and any delay in the filing of the transcript shall constitute waiver of the right to a decision within 90 days under Section 38 of the Act.
- b) Upon petition and good cause shown, the Board may assume the cost of the stenographic transcript of the hearing provided, however, that such petition shall have been filed with and granted by the Board prior to the hearing.

## SUBPART G: FINAL ACTION

## Section 104.220 Decision

The Board shall render a final decision upon the petition within 90 days after the filing of the petition, except that any party may agree to waive his right to a decision within 90 days. Time included in a continuance granted at the request of the petitioner shall not be counted towards the running of the 90 days. When exigencies of time require, the Board may delay the filing of an opinion for 30 days after the filing of its final order under this Part. Where

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the petition for variance is amended, the 90 day period shall commence from the date of filing of the amendment. Any order for the filing of a bond shall be in accordance with the Act.

## Section 104.221 RCRA Variances: Board Decision

- a) Decision periods for RCRA variances are as provided in Section 38(c) of the Act.
- b) The Board will not grant a variance from 35 Ill. Adm. Code 703. 720, 721, 722, 723, 724 or 725, or order issuance or modification of a RCRA permit, unless the procedures of this Part applicable to petitions for RCRA variances have been followed.
- c) The Board may grant a RCRA variance only to the extent consistent with, and with conditions no less stringent than, those which would be required by the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, and 40 CFR 260, 261, 262, 263, 264, 265 and 270. Variances shall require compliance with the regulations in the shortest possible time.
- d) The Board's final Order may direct the Agency to issue or modify a RCRA permit with conditions which may be set forth specifically in the Order, or which may consist of general guidelines to be followed by the Agency, together with applicable regulations, in issuing a permit.
- e) The Board will send copies of its final Opinion and Order to the Agency by messenger, to the United States Environmental Protection Agency, the petitioner and any other party by certified mail, and to all other persons who have requested such information by first class mail.

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**Section 104. APPENDIX A Old Rule Numbers Referenced**

The following table is provided to aid in referencing old Board rule numbers to section numbers pursuant to codification.

**Chapter 1: Procedural Rules****Part IV: Variances****Part 104: Variances**

Rule 401(a)	Section 104.120
Rule 401(a)(c)	Section 104.121
Rule 401(b)	Section 104.124
Rule 401(d)-(g)	Section 104.122
Rule 401(h)	Section 104.125
Rule 402	Section 104.123
Rule 403	Section 104.140
Rule 404	Section 104.141
Rule 405	Section 104.180
Rule 406	Section 104.181
Rule 407	Section 104.160
Rule 408	Section 104.200
Rule 409	Section 104.201
Rule 410	Section 104.220
Rule 411	Section 104.102
Rule 412	Section 104.202

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**1) Heading of the Part: Children's Health Insurance Program**

**2) Code Citation: 89 Ill. Adm. Code 125**

**3) Section Numbers: Proposed Action:**

125.100	Amendment
125.110	Amendment
125.200	Amendment
125.205	Amendment
125.210	New Section
125.220	Amendment
125.230	Amendment
125.240	Amendment
125.245	Amendment
125.250	Amendment
125.260	Amendment
125.300	Amendment
125.310	Amendment
125.320	Amendment
125.330	Amendment
125.340	Amendment
125.400	Amendment
125.420	Amendment
125.440	Amendment
125.445	New Section

**4) Statutory Authority: Implementing and authorized by the Children's Health Insurance Program Act (215 ILCS 106) and Section 12-13 of the Illinois Public Aid Code (305 ILCS 5/12-13)**

**5) Complete Description of the Subjects and Issues Involved: These proposed amendments provide KidCare program changes and respond to a directive from the Health Care Financing Administration (HCFA) concerning cost sharing requirements under the Children's Health Insurance Program (Title XXI) (known as KidCare in Illinois). This Program assists families in obtaining coverage for medical services for their children who are not eligible for coverage under Medicaid. KidCare provides coverage for uninsured children and for children with insurance coverage, by subsidizing the cost of privately sponsored health insurance. Current KidCare provisions for children lacking insurance include nominal copayments for providers and premiums, paid to the Department, that are determined on the basis of family size and monthly countable income. According to the HCFA directive, all American Indian and Alaska Native (AI/AN) children are to be exempt from these cost sharing requirements.**

On October 6, 1999, HCFA issued guidance to states that approval would not



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be granted for state plans or plan amendments that impose cost sharing requirements upon families with AI/AN children enrolled for health benefits coverage under Title XXI. Federal proposed amendments regarding these changes were published in the Federal Register on November 8, 1999. The Department responded to HCFA, stating the commitment to seek change in Illinois law to effect compliance with the proposed federal requirements. Subsequently, HCFA indicated that Illinois' Title XXI State plan amendment concerning KidCare Share and KidCare Premium, currently pending federal approval, would not be approved until the federally specified exemption provisions have been implemented. Therefore, the cost sharing exemption for families with AI/AN children was effective on March 1, 2000, under a related emergency rulemaking.

Other proposed changes are being made in many Sections of Part 125 to provide necessary updates to the Children's Health Insurance Program. These changes are the result of observations regarding the initial period of program operation and agreements on program areas that will benefit from changes in requirements and procedures. Following are the most significant changes:

- Section 125.240 - These changes define KidCare Share and KidCare Premium in terms of a percentage of Federal Poverty Levels rather than the actual income levels in Sections 125.310 and 125.320, which change yearly.
- Section 125.310 - Clarifications are provided on when copayments cannot be charged.
- Section 125.330 - For payment of premiums, the grace period is changed from 30 to 60 days.
- Section 125.440 - Clarifications describe the calculation of the maximum Rebate payment and define Rebate overpayment.

These proposed amendments are not expected to result in any appreciable budgetary changes. On the basis of declarations of race on KidCare applications, the Department can currently identify 11 AI/AN children that will be affected by the new policy concerning the elimination of cost sharing requirements. The estimated annual cost of these exemptions will be approximately \$1,500. Failure to obtain federal approval for the pending State plan amendment would result in a cost to the State of approximately \$4.4 million in lost federal matching funds.

- 6) Will these proposed amendments replace emergency amendments currently in effect? Yes. The proposed changes concerning the elimination of cost sharing requirements for American Indian and Alaska Native children will

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replace emergency amendments that were published on March 17, 2000, at 24 Ill. Reg. 4217.

- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: These proposed amendments do not affect units of local government.
- 11) Time, Place, and Manner in which Interested Persons May Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:
- Joanne Jones  
Office of the General Counsel  
Rules Section  
Illinois Department of Public Aid  
201 South Grand Avenue East  
Third Floor  
Springfield, Illinois 62763-0002  
Telephone: (217)524-0081

The Department requests the submission of written comments within 30 days after the publication of this notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

- 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit

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corporations affected: This proposed rulemaking pertains to health benefits coverage for medical services under the KidCare Health Plan from the Medicaid provider network, both institutional and non-institutional. The Department is unsure whether or not any of the affected entities may qualify as small businesses.

B) Reporting, bookkeeping or other procedures required for compliance:  
None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on Which this Rulemaking Was Summarized: January 2000

The full text of the Proposed Amendments begins on the next page:

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TITLE 89: SOCIAL SERVICES  
CHAPTER I: DEPARTMENT OF PUBLIC AID  
SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 125  
CHILDREN'S HEALTH INSURANCE PROGRAM

SUBPART A: GENERAL PROVISIONS

Section  
125.100 General Description  
125.110 Definitions

SUBPART B: GENERAL ELIGIBILITY AND ENROLLMENT

Section  
125.200 Eligibility for Children's Health Insurance Program  
125.210 Payment of Past-Due Rebate Overpayments  
125.205 Eligibility Exclusions and Terminations  
125.220 Application Process  
125.230 Determination of Monthly Countable Income  
125.240 Eligibility Determination and Enrollment Process  
125.245 Appeals  
125.250 Annual Renewals Determinations  
125.260 Adding Children to and Removing Children from the Program and Changes in Participation

SUBPART C: KIDCARE HEALTH PLAN

Section  
125.300 Covered Services  
125.305 Service Exclusions  
125.310 Copayments  
125.320 Premium Requirements  
125.330 Non-payment of Premium  
125.340 Provider Reimbursement

SUBPART D: KIDCARE REBATE

Section  
125.400 Minimum Coverage Requirements  
125.420 Coverage Verification Process  
125.440 KidCare Insurance Rebate  
125.445 Rebate Overpayments

AUTHORITY: Implementing and authorized by the Children's Health Insurance

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Program Act [215 ILCS 106] and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13].

SOURCE: Adopted by emergency rulemaking at 22 Ill. Reg. 15706, effective August 14, 1998, for maximum of 150 days; adopted at 23 Ill. Reg. 343, effective December 24, 1998; emergency amendment at 24 Ill. Reg. 421, effective March 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 125.100 General Description

This Part implements the Children's Health Insurance Program Act [215 ILCS 106] (~~see Public Act-98-736~~) that authorizes the Department to administer an insurance program to assist families in purchasing health insurance benefits for their children. The program is not an entitlement. The program will enable eligible children of Illinois, to the extent funding permits, access to health benefits coverage. The Department shall provide health benefits coverage to eligible children through purchasing or providing health care benefits or by subsidizing the cost of privately sponsored health insurance, including employer-based health insurance.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

## Section 125.110 Definitions

For the purpose of this Part, the following terms shall be defined as follows:

"Act" means the Children's Health Insurance Program Act [215 ILCS 106] (~~Public Act-98-736~~).

"Caretaker Relative" means a relative, with whom the child lives, who is providing care, supervision and a home for the child. Caretaker relatives include:

Blood or adoptive relatives within the fifth degree of kinship:

father and mother  
brother and sister  
grandmother and grandfather (including up to great-great-great)

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uncle and aunt (including up to great-great)

nephew and niece (including up to great-great)

first cousin

first cousin once removed (child of first cousin)

second cousin (child of great-aunt/uncle)

## Step relatives:

step-father and step-mother

step-brother and step-sister

A person **Person** who is or has been married to one of the above relatives.

"Department" means the Department of Public Aid and any successor agencies.

"Family" means the child applying for the Program and the following persons who live with the child:

The child's parent(s)

The spouse of the child's parent

Children under 19 years of age of the parent(s) or the parent's spouse

The spouse of the child

The children of the child

If any of the above is pregnant, the unborn child(ren).

"Emergency" means the provision of health care services for a medical condition of recent onset and severity that would lead a prudent, lay person, possessing an average knowledge of medicine and health, to believe that urgent or unscheduled medical care is required. Determinations of the patient at the time the patient is initially examined by the physician and not upon the final determination of the patient's actual medical condition.

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"Federal Poverty Level" means the federal poverty income guidelines as established by the federal Department of Health and Human Services and published in the *Federal Register* annually within 90 days after the consumer price index data are released.

"KidCare Health Plan" means the health benefits coverage containing cost sharing features that is available to eligible families and families under the Children's Health Insurance Program, and includes with include KidCare Share (no premium required) and KidCare Premium (premium required).

"KidCare Rebate" means the program under which the Department, on behalf of an eligible child, makes rebate payments to offset a family's family's cost of insuring a child under privately sponsored or employer-based health insurance.

"Managed Care-Entity-or-WEPU-means-a-Health--Maintenance--Organization or a-Managed-Care-Community-Network-or-a-Prepaid-Health-Plan-under contract-with-the-Department"

"Medical Assistance" means health care benefits provided under Article V of the Illinois Public Aid Code.

"Program" means the program created under the Children's Health Insurance Program Act and this Part.

"Rebate" means the payment made by the Department under KidCare Rebate.

"REV" means the Recipient Eligibility Verification system through which medical providers can obtain eligibility and claim status information electronically.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART B: GENERAL ELIGIBILITY AND ENROLLMENT

## Section 125.200 Eligibility for Children's Health Insurance Program

A child may be eligible under the Program provided that all of the following eligibility criteria are met:

- The child is not eligible for Medical Assistance.
- The child is under age 19.
- The child is a member of a family whose monthly countable income is above 133 percent of the Federal Poverty Level and at or

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below 185 percent of the Federal Poverty Level.  
d) The child is a resident of the State of Illinois.  
e) The child is either a United States citizen or included in one of the following categories of non-citizens:

- Unmarried dependent children of either a United States veteran or a United States citizen who was honorably discharged or a person on active military duty.
- Refugees under Section 207 of the Immigration and Nationality Act.
- Asylees under Section 208 of the Immigration and Nationality Act.
- Persons for whom deportation has been withheld under Section 243(h) of the Immigration and Nationality Act.
- Persons granted conditional entry under Section 203(a)(7) of the Immigration and Nationality Act as in effect prior to April 1, 1980.
- Persons lawfully admitted for permanent residence under the Immigration and Nationality Act.
- Parolees, for at least one year, under Section 212(d)(5) of the Immigration and Nationality Act.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 125.205 Eligibility Exclusions and Terminations

a) A child shall not be determined eligible for coverage under the Program if:

- The child is an inmate of a public institution correctional facility or a patient in a mental institution.
- The child is a patient in an institution for mental diseases.
- The child is a member of a family that is eligible for health benefits coverage under a State of Illinois health benefits plan on the basis of a member's employment with a public agency.
- The application is for coverage under the KidCare-Health-Plan described in Subpart C of this Part and the child was covered under a private or employer-based insurance plan during any of the three months preceding his or her application for coverage under the program.
- The child is in categories described in Section 125.200(e)(6) or (e)(7), and the child entered the United States on or after August 22, 1996; he or she shall not be eligible for five years beginning on the date the child entered the United States.
- If a child is otherwise eligible for coverage under the KidCare Health Plan, described in Subpart C of this Part, and the child was previously covered under a private or employer-based insurance plan, coverage under the KidCare Health Plan shall not begin until the first



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- day of the month following a three-month period that shall begin on the day following the last day of the coverage under the private or employer-based insurance plan. The three-month three-month period of being uninsured specified in this subsection (b)(1)(3) above does not apply in the following situations: 1) A child is applying for coverage under the KidCare Rebate, described in Subpart B of this Part; 2) A child becomes ineligible for Medical Assistance under Article V of the Public Aid Code and applies for coverage under the Program; 3) A child if the child involuntarily loses coverage through a private or employer-based insurance plan and applies for coverage under the KidCare Health Plan.
- c) Termination of a child's coverage under from the Program shall be initiated upon the occurrence of any of the following events:
- 1) The child becomes ineligible due to:
    - A) Losing his or her Illinois residency.
    - B) Attaining 19 years of age.
    - C) Becoming enrolled in Medical Assistance.
    - D) Meeting the provisions of subsection (a)(1) or (a)(3)(4)(2) of this Section.
  - 2) The child's caretaker relative fails failing to pay the required premiums under the KidCare Health Plan, as specified in Sections 125.320 and 125.330.
  - 3) A child enrolled in KidCare Rebate no longer being covered under a private or employer-based health insurance plan, except that, subject to the provisions of subsection (b) of this Section, a child may change enrollment from KidCare Rebate to the KidCare Health Plan if there is no unpaid Rebate overpayment at the time of the change.
  - 4) The child's caretaker relative fails failing to report to the Department changes in non-financial information that impacts upon the child's eligibility for the Program.
  - 5) The child's caretaker relative makes a request to the Department to terminate the coverage.
  - 6) The Department determines that a child enrolled under the KidCare Health Plan has other significant health insurance that was not timely reported to the Department.
  - 7) The Department determines that the child is no longer eligible based on any other applicable State or Federal law or regulation.
  - 8) The Department determines that the child's caretaker relative failed failing to provide eligibility information that was truthful and accurate to the best of the applicant's knowledge and belief and that affected the eligibility determination.
  - 9) There has been a Rebate overpayment and it has not been repaid to the Department after notice from the Department.
  - 10) The Department determines that the child's eligibility was incorrectly determined.

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- d) Following termination of a child's coverage under from the Program, the following action is required before the child can be re-enrolled to re-enroll:
- 1) A new application must be completed and the child must be determined otherwise eligible;
  - 2) There must be full payment of premiums under the KidCare Health Plan, for periods in which a premium was owed and not paid for the child, including premiums owed when the child was, for purposes of this Part, a member of another family;
  - 3) Rebate overpayments owed by any caretaker relative in the Family must be repaid; there must be repayment of Rebates paid under KidCare Rebate for periods during which the child was not covered under a private or employer-based insurance plan;
  - 4) If the termination was the result of non-payment of premiums, the child must be out of the program for three months before re-enrollment; and
  - 5) The first month's premium must be paid if the child is eligible for KidCare Premium and the child's Family chose to have coverage under subsection (g) of this Section when the child was initially enrolled in the Program or if there was an unpaid premium on the date the child's previous case was canceled.
- e) An application will be denied if any of the adults in the Family was a caretaker relative of a child during a period for which a premium was due to the Department for that child and the premium remains unpaid at the time of application. Such an application shall be denied regardless of whether the child for whom the premium remains unpaid is included in the application.
- f) An application will be denied if any of the adults in the Family was a caretaker relative of a child during a period for which a Rebate overpayment was received or was the payee of a Rebate overpayment and the overpayment has not been repaid to the Department. Such an application shall be denied regardless of whether the child for whom the Rebate overpayment remains unpaid is included in the application. Children determined to be eligible for the KidCare Health Plan may obtain coverage for a period prior to the date of application for the Program. This coverage shall be subject to the following:
- 1) The Family must request the prior coverage for the child within six months following the initial date of coverage under the KidCare Health Plan.
  - 2) The prior coverage will be child specific and will only be available upon the child's initial enrollment in the Program.
  - 3) The prior coverage will begin with services rendered during the two weeks prior to the date the child's application for the KidCare Health Plan is filed and will continue until the child's coverage under the KidCare Health Plan is effective.
- h) A certificate of prior credible coverage will be issued when a

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child's coverage is terminated under the KidCare Health Plan.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 125.210 Payment of Past-Due Rebate Overpayments

A Rebate overpayment shall be considered paid, for purposes of eligibility to enroll in KidCare Rebate, if the child remains eligible for KidCare Rebate and the Department, in its sole discretion, agrees to recoup the overpayment out of future Rebate payments.

(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 125.220 Application Process

a) Families will be able to apply for the Program using any of the following methods:

- 1) Submit Submitting the Department's application to an address specified by the Department.
- 2) Apply Applying at a Department of Human Services (DHS) local office.
- 3) Apply through a KidCare Application Agent that has an agreement in place with Applying at a Veterans' and Child Health (VACHS) enrollment center as designated by the Department.
- 4) Additional methods that the Department establishes.
- b) The application will meet all requirements found at 89 Ill. Adm. Code 110.10.
- c) Families are obligated to provide truthful and accurate information for determining eligibility and to report promptly to the Department any change in non-financial information provided on the application.
- d) The Department may cease accepting or processing applications if enrollment in the Program is closed due to limited appropriations.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 125.230 Determination of Monthly Countable Income

- a) Monthly countable income for applications processed for the Program is determined by taking the total gross monthly income of the Family and subtracting allowable deductions and exemptions as described in 89 Ill. Adm. Code 120, Subpart H.
- b) For the purpose of subsection (a) of this Section, the following appear: the number of persons in the Family determines

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the applicable income standard.

- 2) For the purpose of subsection (a) of this Section, family means the child applying for the program and the following persons who live with the child:

- A) the child's parent(s);
- B) the spouse of the child's parent(s);
- C) children under age 19 of the parent(s) or the parent's spouse;
- D) the spouse of the child;
- E) the children of the child.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 125.240 Eligibility Determination and Enrollment Process

a) If the monthly countable income is at or below 133 percent of the Federal Poverty Level for the number of persons in the Family income standard, the child will be enrolled in Medical Assistance, if otherwise determined eligible pursuant to 89 Ill. Adm. Code 120, Subpart H.

b) If the monthly countable income is above 133 percent and at or below 185 percent of the Federal Poverty Level for the number of persons in the Family income standard, and all other eligibility requirements of this Part are met and enrollment is open, the child will be enrolled in the Program.

c) For purposes of cost sharing, Families in the KidCare Health Plan will be enrolled into either KidCare Share or KidCare Premium as follows:

- 1) If monthly countable income is above 133 percent and at or below 150 percent of the Federal Poverty Level for the number of persons in the Family, the child will be enrolled in KidCare Share.
- 2) If monthly countable income is above 150 percent and at or below 185 percent of the Federal Poverty Level for the number of persons in the Family, the child will be enrolled in KidCare Premium.
- d) Applicants will be notified, in writing, regarding the outcome of their eligibility determinations.
- e) Eligibility determinations for the Program made by the fifteenth day of the month will be effective for the first day of the following month. Eligibility determinations for the Program made after the fifteenth day of the month will be effective no later than the first day of the second month following that determination.
- f) Monthly identification cards will be issued for each family with a child enrolled under the KidCare Health Plan. As a minimum information on the card will include:

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- 1) ~~The child's name-~~  
 2) ~~Coverage-month-~~  
 3) ~~Copayment-amounts-and-excursions-~~  
 4) ~~Message-when-copayment-cop-is-reached-~~  
 5) ~~Managed-Care-Entity-chosen-if-applicable-~~  
 f) The duration of eligibility for the Program will be 12 months unless one of the events described in Section 125.205(c) occurs. The 12 months of eligibility will commence when the first child in a Family family is covered under the Program. Children added to the Program after the eligibility period begins will be eligible for the balance of the 12-month 12-month eligibility period.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 125.245 Appeals

- a) Any individual who applies for or receives assistance under the Program shall have the right to appeal any of the following actions:
- 1) Refusal to accept an application.
  - 2) Denial of an application or cancellation at the annual renewal determination including denial based on failure to meet one or more of the eligibility requirements specified in this part. If the denial or cancellation is not upheld on appeal, coverage under the Program shall be retroactive to the date the coverage would have commenced had the application or annual determination been approved. However, if the child is eligible for KidCare Premium, it will be at the Family's option whether coverage following a successful appeal shall be prospective only for the remainder of the 12-month period following application or retroactive to the date the coverage would have commenced had the application been approved. All premium and copayment requirements shall apply to the retroactive period.
  - 3) Termination of coverage based on failure to continue to meet one or more of the eligibility requirements specified in this Part. Coverage shall not be continued during the appeal process. If the termination is not upheld on appeal, coverage under the Program shall be reinstated retroactive to the termination date. However, if the child is eligible for KidCare Premium, it will be at the Family's option whether coverage following a successful appeal shall be prospective only for the remainder of the 12-month period following application or retroactive to the date of termination. All end-of premium and copayment requirements shall apply to any retroactive period.
  - 4) Determination or redetermination of the amount of the premium, insurance rebate, or copayments required. Coverage and any

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- premium or copayment requirements, as determined by the Department, shall remain in force during the appeal process.
- b) In addition to the actions that are appealable under subsection (a) of this Section, individuals covered under the KidCare Health Plan shall have the right to appeal any of the following actions:
- 1) Termination of coverage due to non-payment of the required premium.
  - 2) Denial of payment for a medical service or item that requires prior approval.
  - 3) Decision granting prior approval for a lesser or different medical service or item than was originally requested.
  - c) The Department's decision to deny an application due to closing of enrollment for the Program shall not be appealable.
  - d) Individuals may initiate the appeal process by:
    - 1) Filing a written, signed request for a hearing directed to the Department's Assistance Hearings Section;
    - 2) Calling a toll free telephone number as designated by the Department.
  - e) The request for a hearing may be filed by the individual affected by the action or by the individual's authorized representative.
  - f) For purposes of initiating the appeal process, a copy of a written, signed request for a hearing is considered the same as the original written, signed request.
  - g) The request for a hearing must be filed no later than 60 days after notice of the appealable action has been given.
  - h) Unless otherwise specified, coverage shall not be continued when an appeal is pending.
  - i) The provisions of Subpart A of the Department's administrative rules at 89 Ill. Adm. Code 104, Practice in Administrative Hearings, shall govern the handling of appeals and the conduct of hearings under the Program.
  - j) An individual can, prior to a decision being rendered on the appeal, withdraw-the-appeal-and reapply for the program.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 125.250 Annual Renewals Determinations

- a) Eligibility determinations shall be reviewed by the Department, or its authorized agent, at least annually.
- b) Prior to the 12-month 12-month eligibility period ending, and in sufficient time for the Family family to respond to the Department's request for information, the Department will send an annual renewal determination notice to the Family family.
- c) Annual renewals determinations shall be subject to all eligibility

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requirements set forth in Sections 125.200 and 125.205.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 125.260 Adding Children to and Removing Children from the Program and Changes in Participation

- a) Families may add eligible children to the Program during the 12-month 12-month eligibility period, without eligibility being reviewed by the Department having to submit an application. Coverage for children added shall be for the remainder of the family's original 12-month eligibility period.
- b) Premium amounts under the KidCare Health Plan and Rebates under KidCare Rebate will be adjusted to reflect adding or removing a child from the Program.

- c) A child covered under KidCare Rebate may change coverage to the KidCare Health Plan without eligibility being reviewed by the Department if the child involuntarily loses coverage through a private or employer-based insurance plan, if the loss of insurance is reported to the Department within ten days after the end of coverage and if there is no unpaid Rebate overpayment. Coverage under the KidCare Health Plan shall be for the remainder of the existing 12-month eligibility period.

- d) A child covered under the KidCare Health Plan may change coverage to KidCare Rebate without eligibility being reviewed by the Department if the child obtains coverage through a private or employer-based insurance plan, notifies the Department within ten days of the beginning of coverage under the private or employer-based insurance plan and there are no unpaid premiums owed to the Department. Coverage under KidCare Rebate shall be for the remainder of the existing 12-month eligibility period.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: KIDCARE HEALTH PLAN

### Section 125.300 Covered Services

- a) For children covered under the KidCare Health Plan, covered health care services shall be the same covered services for children as described at 89 Ill. Adm. Code 140, 77 Ill. Adm. Code 2090, and 59 Ill. Adm. Code 132, except as provided in Section 125.305, and unless contrary to the moral or religious beliefs as defined in the Right of Conscience Act 4945-I-069-7017 subject to appropriation and any applicable cost sharing requirements defined in Section

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125.310 and Section 125.320.

- b) Children determined to be eligible for the KidCare Health Plan may obtain coverage for a period prior to the date of application for the Program. This coverage shall be subject to the following:

- 1) The family must request the prior coverage for the child within six months following the initial date of coverage under the KidCare Health Plan;
- 2) The prior coverage will be child-specific and will only be available upon the child's initial application and approval for the Program;
- 3) If coverage lapses re-enrollment shall be completed in advance of the next covered medical visit and the first month's premium if applicable, shall be paid in advance of any covered medical visit;
- 4) The prior coverage will begin with services rendered during the two weeks prior to the date the child's application for the KidCare Health Plan is filed and will continue until the child's coverage under the KidCare Health Plan is effective.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 125.310 Copayments

- a) Copayments may be charged to the family by a health care professional whenever the service is performed in an office or home setting, except for visits scheduled for well-baby care, well-child care or age-appropriate immunizations. Copayments may also be charged to the family by hospitals, once per inpatient admission or outpatient encounter (including the emergency room). No copayment is permitted for visits to health care professionals or hospitals made solely for speech, occupational or physical therapy, audiology, radiology or laboratory services (including APR Group 2 procedures). Families with an enrolled child who is an American Indian or Alaska Native shall not be charged copayments.

- b) Copayment requirements are as follows:

- 1) Practitioner office visit:
  - A) KidCare Share Level-I copayment: \$2 per visit.
  - B) KidCare Premium Level-II copayment: \$5 per visit.
- 2) Home health care visit:
  - A) KidCare Share Level-I copayment: \$2 per visit.
  - B) KidCare Premium Level-II copayment: \$5 per visit.
- 3) Inpatient hospitalization:
  - A) KidCare Share Level-I copayment: \$2 per admission.
  - B) KidCare Share Level-II copayment: \$5 per admission.
- 4) Outpatient encounter (including the emergency room):



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- A) KidCare Share level-i copayment: \$2 per visit.  
B) KidCare Premium level-ii copayment: \$5 per visit.  
5) Prescription drugs:  
A) KidCare Share level-i copayment: \$2 for a 1- to 30-day 1-30 day supply on both generic and brand name drugs.  
B) KidCare Premium level-ii copayments: \$3 for a 1- to 30-day 1-30-day supply on generic drugs or \$5 for a 1- to 30-day 1-30 day supply on brand name drugs.  
6) Nonemergency visit to an emergency room:  
A) KidCare Share level-i copayments: \$2 per visit.  
B) KidCare Premium level-ii copayment: \$25 per visit.  
C) Copayment requirements will be determined based upon the monthly countable income as calculated in Section 125.230.  
d) The maximum out-of-pocket expense a family will incur for copayments during a 12-month 12-month eligibility period is \$100.  
e) Once the Family has satisfied the copayment cap, the Family the family is responsible for submitting receipts, to the Department, documenting the payment of copayments. The Department may return partial documentation received on copayments to the Family family.  
f) Upon the Department determining that the copayment cap has been satisfied, the following will occur:  
1) A notice stating that the copayment cap has been satisfied, and the date satisfied, will be sent to the Family family.  
2) A message that the copayment cap has been satisfied, and the date satisfied, will be available through the Family's printed-on-the next-monthly identification card.  
3) REV will be updated to reflect that the copayment cap has been reached.  
g) Providers will be responsible for collecting copayments under the KidCare Health Plan.  
h) Providers may elect not to charge copayments. If copayments are charged, the copayment must comply with the requirements in this Section.  
i) Providers shall be responsible for refunding to the Family family copayments they collect after the Family family has reached the copayment cap.  
j) The Department will not require providers to deliver services when copayments properly charged under the KidCare Health Plan are will not be paid.  
k) Copayment-levels will be determined based-on family-size-and-monthly countable-income-as-follows:  
i) For family-size-of-one:  
A) level-i--copayment: monthly-countable-income-of-\$993-to \$1,086;  
B) level-ii-copayment: monthly-countable-income-of-\$1,087-to \$1,241;  
2) For family-size-of-two:  
A) level-i--copayment: monthly-countable-income-of-\$1,204-to \$1,356;  
B) level-ii-copayment: monthly-countable-income-of-\$1,357-to \$1,673;  
3) For family-size-of-three:  
A) level-i--copayment: monthly-countable-income-of-\$1,514-to \$1,706;  
B) level-ii-copayment: monthly-countable-income-of-\$1,707-to \$2,104;  
4) For family-size-of-four:  
A) level-i--copayment: monthly-countable-income-of-\$1,824-to \$2,056;  
B) level-ii-copayment: monthly-countable-income-of-\$2,057-to \$2,536;  
5) For family-size-of-five:  
A) level-i--copayment: monthly-countable-income-of-\$2,135-to \$2,406;  
B) level-ii-copayment: monthly-countable-income-of-\$2,407-to \$2,968;  
6) For family-size-of-six:  
A) level-i--copayment: monthly-countable-income-of-\$2,445-to \$2,756;  
B) level-ii-copayment: monthly-countable-income-of-\$2,757-to \$3,399;  
7) For family-size-of-seven:  
A) level-i--copayment: monthly-countable-income-of-\$2,757-to \$3,106;  
B) level-ii-copayment: monthly-countable-income-of-\$3,107-to \$3,831;  
8) For family-size-of-eight:  
A) level-i--copayment: monthly-countable-income-of-\$3,866-to \$3,450;  
B) level-ii-copayment: monthly-countable-income-of-\$3,451-to \$4,263;  
9) For family-units-of-more-than-eight-members-add-\$233-for-each additional member;  
i) the-Department-will-review-and-update-income-levels-annually-to reflect-changes-in-the-Federal-Poverty-levels:  
(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)
- Section 125.320 Premium Requirements  
a) Families with children enrolled in KidCare Premium pursuant to Section

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125.240(c) must pay the premiums established by this Section. Premium requirements under the KidCare-Health-Plan will be determined as follows:

- 1) For family size of one:
  - A) No premium required; monthly countable income of \$993 to \$1,066.
  - B) Premium required; monthly countable income of \$1,067 to \$1,241.
- 2) For family size of two:
  - A) No premium required; monthly countable income of \$1,204 to \$1,356.
  - B) Premium required; monthly countable income of \$1,357 to \$1,673.
- 3) For family size of three:
  - A) No premium required; monthly countable income of \$1,614 to \$1,786.
  - B) Premium required; monthly countable income of \$1,787 to \$2,184.
- 4) For family size of four:
  - A) No premium required; monthly countable income of \$1,824 to \$2,056.
  - B) Premium required; monthly countable income of \$2,057 to \$2,536.
- 5) For family size of five:
  - A) No premium required; monthly countable income of \$2,135 to \$2,406.
  - B) Premium required; monthly countable income of \$2,407 to \$2,968.
- 6) For family size of six:
  - A) No premium required; monthly countable income of \$2,445 to \$2,756.
  - B) Premium required; monthly countable income of \$2,757 to \$3,399.
- 7) For family size of seven:
  - A) No premium required; monthly countable income of \$2,755 to \$3,406.
  - B) Premium required; monthly countable income of \$3,407 to \$4,093.
- 8) For family size of eight:
  - A) No premium required; monthly countable income of \$3,966 to \$4,456.
  - B) Premium required; monthly countable income of \$4,457 to \$4,763.
- 9) For family units of more than eight members, add \$233 for each additional member.
- b) Premium requirements will be determined based upon the monthly

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countable income as calculated in Section 125.239:

- c) The premium amounts are \$15 for one child, \$25 for two children and \$30 for three or more children.
- d) Premiums are billed by and payable to the Department, or its authorized agent, on a monthly basis.
- e) The premium due date will be 26 days after the fifth day of the calendar month preceding the month of coverage.
- f) The premium will not change during the eligibility period, unless the family reports a decrease in monthly countable income placing the family in the no premium level or the family family adds or removes children from the coverage.
- g) No premiums shall be charged to families with an enrolled child who is an American Indian or Alaska Native. The Department will review and update income levels annually to reflect changes in the Federal Poverty Levels.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

## Section 125.330 Non-payment of Premium

- a) KidCare Health plan participants will have a grace period through the end of the month following the coverage month to pay the premium.
- b) Failure to pay the full monthly premium by the last day of the grace period will result in termination of coverage.
- c) Partial premium payments will not be refunded.
- d) Collection action will be initiated by the Department to collect unpaid premiums.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

## Section 125.340 Provider Reimbursement

- a) Providers under this Part shall be subject to approval by the Department to provide health care under the Illinois Public Aid Code.
- b) Provider participation under this Part shall be voluntary.
- c) Providers under this Part shall be reimbursed in accordance with the established rates of the Department or other appropriate State agency.
- d) In addition to reimbursements received from the Department, providers may retain copayments defined in Section 125.310.
- e) Providers under this Part shall be prohibited from billing Families covered under the KidCare Health Plan any difference between the charge amount and the amount paid by the Department, except for copayments as specified in Section 125.310.
- f) Providers shall be responsible for refunding to the Family participant

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copayments collected in excess of the amounts permitted by this Part.  
(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART D: KIDCARE REBATE

## Section 125.400 Minimum Coverage Requirements

For an eligible child to participate in KidCare Rebate, the eligible child must be covered by an insurance plan that offers comprehensive major medical coverage providing benefits for physician services and hospital inpatient services.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 125.420 Coverage Verification Process

- a) All applications for participation in KidCare Rebate must be accompanied by the Department's Insurance Rebate Form.
- b) Verification of insurance coverage for the previous coverage period ~~3~~ months will be required at the annual renewal of ~~on-reapplication~~ for KidCare Rebate.
- c) The Department, or its authorized agent, may verify insurance coverage for participants under KidCare Rebate.
- d) ~~Collection action will be initiated by the Department to collect Rebates paid when a child was not covered under a private or employer-based health plan.~~

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 125.440 KidCare Insurance Rebate

- a) The Rebate will be paid to the individual policyholder insuring the child.
- b) The Department will issue Rebates on a monthly basis.
- c) The total dollar amount of the Rebate paid by the Department per child per month shall be the lesser of:
  - 1) The maximum monthly amount set by the Department calculated in accordance with the restrictions in 215 ILCS 106/25 and available appropriations ~~average dollar payment less premium incurred per child per month paid by the Department under the KidCare Health Plan, or~~
  - 2) The policyholder's monthly portion of the premium paid for

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- d) The Department shall set the amount of the Rebate, described in subsection (c) of this Section, prospectively based upon the prior fiscal year's experience adjusted for incurred, but not reported claims and estimated increases or decreases in the cost of medical care in calculating the Rebate amount for periods prior to July 1, 1999. The Department will use State fiscal year 1996 payments for children eligible for Medical Assistance and income assistance under the Aid to Families with Dependent Children Program with appropriate adjustments for cost and utilization changes through January 1, 1999.
- e) To be eligible for payment, a Rebate must equal at least one dollar.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 125.445 Rebate Overpayments

- a) For purposes of this Part, a Rebate overpayment occurs in any of the following circumstances:
  - 1) the monthly Rebate paid was higher than the policyholder's portion of the premium of the children enrolled in KidCare Rebate;
  - 2) the monthly Rebate paid per child was higher than the maximum monthly amount set by the Department pursuant to Section 125.440(c)(1);
  - 3) the Rebate was paid for a child who was incorrectly enrolled in KidCare Rebate due to inaccurate or untruthful information provided on the application; or
  - 4) the Rebate was paid for a period during which the child was not covered by private or employer-based insurance meeting the requirements of Section 125.400.
- b) Collection action will be initiated by the Department to collect Rebate overpayments.
- c) In cases where the family timely notified the Department of the loss of insurance past the date when the Department was able to stop issuance of the next Rebate check, the next Rebate check is not an overpayment.
- d) In cases where a child is covered by private or employer-based insurance (regardless of whether the coverage meets the requirements of Section 125.400) and, due to Department error, Department of Human Services error or inaccurate information from an employer or other third party, a child is enrolled in Rebate that should not have been or a Rebate payment is higher than it would have been if properly calculated based on accurate information, no overpayment occurs. Provided the amount sent in any month does not exceed the maximum monthly amount set by the Department pursuant to Section

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125.440(C)(1).

(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Hospital Services
- 2) Code Citation: 89 Ill. Adm. Code 148
- 3) Section Numbers: 148.120 Proposed Action: Amendment
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code (305 ILCS 5/12-13)
- 5) Complete Description of the Subjects and Issues Involved: These proposed amendments to the Department's rules on hospital services pertain to mental health facilities as described in Section 1923(h) of the Social Security Act. The proposed changes convert the disproportionate share (DSH) payment process for State-operated mental health facilities from a per diem payment to a quarterly payment. These changes are being made to ease the administrative burden in setting DSH rates for these facilities and reduce the need for payment reconciliation. Representatives of the Health Care Financing Administration recommended the change to quarterly payments for State-operated mental health facilities in order to make their oversight of the program less burdensome.

Technical changes are also being made to strike obsolete references to the Aid to the Medically Indigent (AMI) Program. AMI was eliminated, effective August 1, 1991, and the related rules were repealed, effective December 24, 1991.

Total aggregate DSH spending for mental health facilities under these new provisions is not expected to change.

- 6) Will these proposed amendments replace emergency amendments currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

Sections	Proposed Action	Illinois Register Citation
148.310	Amendment	March 17, 2000 (24 Ill. Reg. 4053)
148.340	Amendment	March 17, 2000 (24 Ill. Reg. 4053)
148.350	Amendment	March 17, 2000 (24 Ill. Reg. 4053)
148.360	Repeal	March 17, 2000 (24 Ill. Reg. 4053)
148.370	Amendment	March 17, 2000 (24 Ill. Reg. 4053)
148.380	Repeal	March 17, 2000 (24 Ill. Reg. 4053)



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amendments were not included on either of the two most recent agendas because: This rulemaking was inadvertently omitted when the most recent regulatory agenda was published.

The full text of the proposed amendments begins on the next page:

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- 148.390 Amendment March 17, 2000 (24 Ill. Reg. 4053)  
10) Statement of Statewide Policy Objectives: These proposed amendments do not affect units of local government.

- 11) Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Joanne Jones  
Office of the General Counsel, Rules Section  
Illinois Department of Public Aid  
201 South Grand Avenue East, Third Floor  
Springfield, Illinois 62763-0002  
Telephone: (217)524-0081

The Department requests the submission of written comments within 30 days after the publication of this notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

- 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: State-operated mental health facilities will be affected by this proposed rulemaking.

B) Reporting, bookkeeping or other procedures required for compliance:  
None

C) Types of professional skills necessary for compliance: None

- 13) Regulatory Agenda on which this Rulemaking was Summarized: These proposed

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TITLE 89: SOCIAL SERVICES  
CHAPTER I: DEPARTMENT OF PUBLIC AID  
SUBCHAPTER d: MEDICAL PROGRAMS

PART 148  
HOSPITAL SERVICES

## Section

148.10 Hospital Services  
148.10 Participation  
148.20 Definitions and Applicability  
148.25 Definitions  
148.30 General Requirements  
148.40 Special Requirements  
148.50 Covered Hospital Services  
148.60 Services Not Covered as Hospital Services  
148.70 Limitation On Hospital Services  
148.80 Organ Transplant Services Covered Under Medicaid (Repealed)  
148.80 Organ Transplant Services  
148.82 Heart Transplants (Repealed)  
148.90 Liver Transplants (Repealed)  
148.100 Bone Marrow Transplants (Repealed)  
148.110 Disproportionate Share Hospital (DSH) Adjustments  
148.120 Outlier Adjustments for Exceptionally Costly Stays  
148.130 Hospital Outpatient and Clinic Services  
148.140 Public Law 103-66 Requirements  
148.150 Payment Methodology for County-Owned Hospitals in an Illinois County with a Population of Over Three Million  
148.160 Payment Methodology for Hospitals Organized Under the University of Illinois Hospital Act  
148.175 Supplemental Disproportionate Share Payment Methodology for Hospitals Organized Under the Town Hospital Act  
148.180 Payment for Pre-operative Days, Patient Specific Orders, and Services Which Can Be Performed in an Outpatient Setting  
148.190 Copayments  
148.200 Alternate Reimbursement Systems  
148.210 Filing Cost Reports  
148.220 Pre September 1, 1991 Admissions  
148.230 Admissions Occurring on or after September 1, 1991  
148.240 Utilization Review and Furnishing of Inpatient Hospital Services Directly or Under Arrangements  
148.250 Determination of Alternate Payment Rates to Certain Exempt Hospitals  
148.260 Calculation and Definitions of Inpatient Per Diem Rates  
148.270 Determination of Alternate Cost Per Diem Rates for All Hospitals; Payment Rates for Certain Exempt Hospital Units; and Payment Rates for Certain Other Hospitals  
148.280 Reimbursement Methodologies for Children's Hospitals and Hospitals

Reimbursed Under Special Arrangements  
148.285 Excellence in Academic Medicine Payments  
148.290 Adjustments and Reductions to Total Payments  
148.295 Critical Hospital Adjustment Payment (CHAP)  
148.296 Supplemental Critical Hospital Adjustment Payments (SCHAP)  
148.297 Pediatric Outpatient Adjustment Payments  
148.298 Pediatric Inpatient Adjustment Payments  
148.300 Payment  
148.310 Review Procedure  
148.320 Alternatives  
148.330 Exemptions  
148.340 Subacute Alcoholism and Substance Abuse Treatment Services  
148.350 Definitions  
148.360 Types of Subacute Alcoholism and Substance Abuse Treatment Services  
148.368 Volume Adjustment (Repealed)  
148.370 Payment for Subacute Alcoholism and Substance Abuse Treatment Services  
148.380 Rate Appeals for Subacute Alcoholism and Substance Abuse Treatment Services  
148.390 Hearings  
148.400 Special Hospital Reporting Requirements

AUTHORITY: Implementing and authorized by Articles III, IV, V, VI, and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V, VI and 12-13].

SOURCE: Sections 148.10 thru 148.390 recodified from 89 Ill. Adm. Code 140.94 thru 140.398 at 13 Ill. Reg. 9572; Section 148.120 recodified from 89 Ill. Adm. Code 140.110 at 13 Ill. Reg. 12118; amended at 14 Ill. Reg. 2553, effective February 9, 1990; emergency amendment at 14 Ill. Reg. 11392, effective July 1, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 15358, effective September 13, 1990; amended at 14 Ill. Reg. 16998, effective October 4, 1990; amended at 14 Ill. Reg. 18293, effective October 30, 1990; amended at 14 Ill. Reg. 18439, effective November 8, 1990; emergency amendment at 15 Ill. Reg. 10502, effective July 1, 1991, for a maximum of 150 days; emergency expired October 29, 1991; emergency amendment at 15 Ill. Reg. 12005, effective August 9, 1991, for a maximum of 150 days; emergency expired January 6, 1992; emergency amendment at 15 Ill. Reg. 16166, effective November 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 18684, effective December 23, 1991; amended at 16 Ill. Reg. 6255, effective June 30, 1992, for a maximum of 150 days; emergency expired November 27, 1992; emergency amendment at 16 Ill. Reg. 11942, effective July 10, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14778, effective October 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 19873, effective December 7, 1992; amended at 17 Ill. Reg. 131, effective December 21, 1992; amended at 17 Ill. Reg. 3296, effective

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March 1, 1993; amended at 17 Ill. Reg. 6649, effective April 21, 1993; amended at 17 Ill. Reg. 14643, effective August 30, 1993; emergency amendment at 17 Ill. Reg. 17323, effective October 1, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 3450, effective February 28, 1994; emergency amendment at 18 Ill. Reg. 12853, effective August 2, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 14117, effective September 1, 1994; amended at 18 Ill. Reg. 17648, effective November 29, 1994; amended at 19 Ill. Reg. 1067, effective January 20, 1995; emergency amendment at 19 Ill. Reg. 3510, effective March 1, 1995, for a maximum of 150 days; emergency expired July 29, 1995; emergency amendment at 19 Ill. Reg. 6709, effective May 12, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 10060, effective June 29, 1995; emergency amendment at 19 Ill. Reg. 10752, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 13009, effective September 5, 1995; amended at 19 Ill. Reg. 16830, effective November 28, 1995; amended at 20 Ill. Reg. 872, effective December 29, 1995; amended at 20 Ill. Reg. 7912, effective May 31, 1996; emergency amendment at 20 Ill. Reg. 9281, effective July 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 12510, effective September 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 15722, effective November 27, 1996; amended at 21 Ill. Reg. 607, effective January 2, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 8386, effective June 23, 1997; emergency amendment at 21 Ill. Reg. 9552, effective July 1, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 9822, effective July 2, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 10147, effective August 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 13349, effective September 23, 1997; emergency amendment at 21 Ill. Reg. 13675, effective September 27, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 16161, effective November 26, 1997; amended at 22 Ill. Reg. 1408, effective December 29, 1997; amended at 22 Ill. Reg. 3083, effective January 26, 1998; amended at 22 Ill. Reg. 11514, effective June 22, 1998; emergency amendment at 22 Ill. Reg. 13070, effective July 1, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 15027, effective August 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16273, effective August 28, 1998; amended at 22 Ill. Reg. 21490, effective November 25, 1998; amended at 23 Ill. Reg. 5784, effective April 30, 1999; amended at 23 Ill. Reg. 7115, effective June 1, 1999; amended at 23 Ill. Reg. 7908, effective June 30, 1999; emergency amendment at 23 Ill. Reg. 8213, effective July 1, 1999, for a maximum of 150 days; emergency amendment at 23 Ill. Reg. 12772, effective October 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13621, effective November 1, 1999; amended at 24 Ill. Reg. 2400, effective February 1, 2000; amended at 24 Ill. Reg. 3845, effective February 25, 2000; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 148.120 Disproportionate Share Hospital (DSH) Adjustments

Disproportionate Share Hospital (DSH) adjustments for inpatient services provided prior to October 1, 1993, shall be determined and paid in accordance

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with the statutes and administrative rules governing the time period when the services were rendered. The Department shall make an annual determination of those hospitals qualified for adjustments under this Section effective October 1, 1993, and each October 1, thereafter unless otherwise noted.

- a) Qualified Disproportionate Share Hospitals (DSH). For inpatient services provided on or after October 1, 1993, the Department shall make adjustment payments to hospitals which are deemed as disproportionate share by the Department. A hospital may qualify for a DSH adjustment in one of the following ways:
  - 1) The hospital's Medicaid inpatient utilization rate, as defined in subsection (k)(5) of this Section, is at least one half standard deviation above the mean Medicaid utilization rate, as defined in subsection (k)(3) of this Section.
  - 2) The hospital's low income utilization rate exceeds 25 per centum. For this alternative, payments for all patient services (not just inpatient) for Medicaid, Family and Children Assistance (formerly known as General Assistance)--~~Aid-to-the-Medically-Indigent (AMI)~~ and/or any local or State government-funded care, must be counted as a percentage of all net patient service revenue. To this percentage, the percentage of total inpatient charges attributable to inpatient charges for charity care (less payments for Family and Children Assistance ~~GA-and-AMF~~ inpatient hospital services, and/or any local or State government-funded care) must be added.
  - 3) Illinois hospitals that, on July 1, 1991, had a Medicaid inpatient utilization rate, as defined in subsection (k)(5) of this Section, that was at least the mean Medicaid inpatient utilization rate, as defined in subsection (k)(3) of this Section, and which were located in a planning area with one-third or fewer excess beds as determined by the Illinois Health Facilities Planning Board (77 Ill. Adm. Code 1100), and that, as of June 30, 1997, were located in a federally designated Health Manpower Shortage Area (42 CFR 5, 1989).
- 4) Illinois hospitals that:
  - A) Have a Medicaid inpatient utilization rate, as defined in subsection (k)(5) of this Section, which is at least the mean Medicaid inpatient utilization rate, as defined in subsection (k)(3) of this Section, and
  - B) Have a Medicaid obstetrical inpatient utilization rate, as defined in subsection (k)(6) of this Section, that is at least one standard deviation above the mean Medicaid obstetrical inpatient utilization rate, as defined in subsection (k)(4) of this Section.
- 5) Any children's hospital, as defined in 89 Ill. Adm. Code 149.50(c)(3).
- b) In addition, to be deemed a DSH hospital, a hospital must provide the

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Department, in writing, with the names of at least 2 obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a State Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures. This requirement does not apply to a hospital in which the inpatients are predominantly individuals under 18 years of age; or does not offer nonemergency obstetric services as of December 22, 1987. Hospitals that do not offer nonemergency obstetrics to the general public, with the exception of those hospitals described in 89 Ill. Adm. Code 149.50(c)(1) through (c)(4), must submit a statement to that effect.

- c) In making the determination described in subsections (a)(1) and (a)(4)(A) of this Section above, the Department shall utilize:

1) The hospital's final audited cost report for the hospital's base fiscal year. Medicaid inpatient utilization rates, as defined in subsection (k)(5) of this Section, which have been derived from final audited cost reports, are not subject to the Review Procedure described in Section 148.310, with the exception of errors in calculation.

2) In the absence of a final audited cost report for the hospital's base fiscal year, the Department shall utilize the hospital's unaudited cost report for the hospital's base fiscal year. Due to the unaudited nature of this information, hospitals shall have the opportunity to submit a corrected cost report for the determination described in subsections (a)(1) and (a)(4)(A) of this Section above. Submittal of a corrected cost report in support of subsections (a)(1) and (a)(4)(A) of this Section above must be received or post marked no later than the first day of July preceding the DSH determination year for which the hospital is requesting consideration of such corrected cost report for the determination of DSH qualification. Corrected cost reports which are not received in compliance with these time limitations will not be considered for the determination of the hospital's Medicaid inpatient utilization rate as described in subsection (k)(5) of this Section.

A) Hospital's Medicaid inpatient utilization rates, as defined in subsection (k)(5) of this Section, which have been derived from unaudited cost reports, are not subject to the Review Procedure described in Section 148.310, with the exception of errors in calculation. Pursuant to subsection (c)(2) of this Section above, hospitals shall have the opportunity to submit corrected cost report information prior to the Department's final DSH determination.

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- B) In the event a subsequent final audited cost report reflects a Medicaid inpatient utilization rate, as described in subsection (k)(5) of this Section, which is lower than the Medicaid inpatient utilization rate derived from the unaudited cost report utilized for the DSH determination, the Department shall recalculate the Medicaid inpatient utilization rate based upon the final audited cost report, and recoup any overpayments made if the percentage change in the DSH payment rate is greater than five percent.

- 3) Certain types of inpatient days of care provided to Title XIX recipients are not available from the cost report, i.e., Medicare/Medicaid crossover claims, out-of-state Title XIX Medicaid utilization levels, Medicaid Health Maintenance Organization (HMO) days, hospital residing long term care days, and Medicaid days for alcohol and substance abuse rehabilitative care under category of service 35. To obtain Medicaid utilization levels in these instances, the Department shall utilize:

A) Medicare/Medicaid Crossover Claims.

i) For DSH determination years on or after October 1, 1996, the Department will utilize the Department's paid claims data adjudicated through the last day of June preceding the DSH determination year for each hospital's base fiscal year. Provider logs as described in the following subsection (c)(3)(A)(ii) will not be used in the determination process for DSH determination years on or after October 1, 1996.

ii) For DSH determination years prior to October 1, 1996, hospitals may submit additional information to document Medicare/Medicaid crossover days that were not billed to the Department due to a determination that the Department had no liability for deductible or coinsurance amounts. That information must be submitted in log form. The log must include a patient account number or medical record number, patient name, Medicaid recipient identification number, Medicare identification number, date of admission, date of discharge, the number of covered days, and the total number of Medicare/Medicaid crossover days. That log must include all Medicare/Medicaid crossover days billed to the Department and all Medicare/Medicaid crossover days which were not billed to the Department for services provided during the hospital's base fiscal year. If a hospital does not submit a log of Medicare/Medicaid crossover days that meets the above requirements, the Department will utilize the



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Department's paid claims data adjudicated through the last day of June preceding the DSH determination year for the hospital's applicable base fiscal year.

- B) Out-of-state Title XIX Utilization Levels. Hospital statements and verification reports from other states will be required to verify out-of-state Medicaid recipient utilization levels. The information submitted must include only those days of care provided to out-of-state Medicaid recipients during the hospital's base fiscal year.

- C) HMO days. The Department will utilize the Department's HMO claims data available to the Department as of the last day of June preceding the DSH determination year for each hospital's base fiscal year to determine the number of inpatient days provided to recipients enrolled in an HMO.

- D) Hospital Residing Long Term Care Days. The Department will utilize the Department's paid claims data adjudicated through the last day of June preceding the DSH determination year for each hospital's base fiscal year to determine the number of hospital residing long term care days provided to recipients.

- E) Alcohol and Substance Abuse Days. The Department will utilize its paid claims data under category of service 35 available to the Department as of the last day of June preceding the DSH determination year for each hospital's base fiscal year to determine the number of inpatient days provided for alcohol and substance abuse rehabilitative care.

- d) Hospitals may apply for DSH status under subsection (a)(2) of this Section by submitting an audited certified financial statement, for the hospital's base fiscal year, to the Department of Human Services. The statements must contain the following breakdown of information prior to submittal to the Department for consideration:

- 1) Total hospital net revenue for all patient services, both inpatient and outpatient, for the hospital's base fiscal year.
- 2) Total payments received directly from State and local governments for all patient services, both inpatient and outpatient, for the hospital's base fiscal year.
- 3) Total gross inpatient hospital charges for charity care (this must not include contractual allowances, bad debt or discounts, except contractual allowances and discounts for Family and Children Assistance, formerly known as General Assistance and AMI patients), for the hospital's base fiscal year.
- 4) Total amount of the hospital's gross charges for inpatient hospital services for the hospital's base fiscal year.

- e) With the exception of cost-reporting children's hospitals in contiguous states that provide 100 or more inpatient days of care to

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Illinois program participants, only those cost-reporting hospitals located in states contiguous to Illinois that qualify for DSH in the state in which they are located based upon the federal definition of a DSH hospital, as defined in Section 1923(b)(1) of the Social Security Act, may qualify for DSH hospital adjustments under this Section. For purposes of determining the Medicaid inpatient utilization rate, as described in subsection (k)(5) of this Section and as required in Section 1923(b)(1) of the Social Security Act, out-of-state hospitals will be measured in relationship to one standard deviation above the mean Medicaid inpatient utilization rate in their state. Out-of-state hospitals that do not qualify by the Medicaid inpatient utilization rate from their state may submit an audited certified financial statement as describe in subsection (d) of this Section above. Payments to out-of-state hospitals will be allocated using the same method as described in subsection (g) of this Section.

- f) The Limitation Requirements for Additional Information.
- 1) The information required in subsections (a)(2), (c), (d) and (e) of this Section must be received or post marked no later than the first day of July preceding the DSH determination year for which the hospital is requesting consideration of such information for the determination of DSH qualification. Information required in subsections (a)(2), (c), (d) and (e) of this Section which is not received or post marked in compliance with these limitations will not be considered for the determination of those hospitals qualified for DSH adjustments.

- 2) The information required in subsection (b) of this Section must be received or post marked within 30 calendar days after receipt of notification from the Department that the information must be submitted. Information required in this Section which is not received in compliance with these limitations will not be considered for the determination of those hospitals qualified for DSH adjustments.

- g) Inpatient Payment Adjustments to DSH Hospitals. The adjustment payments required by subsection (a) of this Section above shall be calculated annually as follows:

- 1) Five Million Dollar Fund Adjustment for hospitals defined in Section 148-25(b)(1).

- a) Hospitals qualifying as DSH hospitals under subsection (a)(1) of this Section that have a Medicaid inpatient utilization rate, as described in subsection (k)(5) of this Section, which is at least one standard deviation above the mean Medicaid inpatient utilization rate, as described in subsection (k)(3) of this Section, and hospitals qualifying as DSH hospitals under subsection (a)(2) of this Section will receive an add-on payment to their inpatient rate.

- b) The distribution method for the add-on payment described in

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subsection (g)(1)(A) of this Section **above** is based upon a fund of \$5 million. All hospitals qualifying under subsection (g)(1)(A) of this Section **above** will receive a \$5 per day add-on to their current rate. The total cost of this adjustment is calculated by multiplying each hospital's most recent completed fiscal year Medicaid inpatient utilization data (adjusted based upon historical utilization and projected increases in utilization) by \$5. The total dollar amount of this calculation is then subtracted from the \$5 million fund.

C) The remaining fund balance is then distributed to the hospitals that qualify under subsection (a)(1) of this Section **above** that have a Medicaid inpatient utilization rate, as described in subsection (k)(5) of this Section, which is at least one standard deviation above the mean Medicaid inpatient utilization rate, above in proportion to the percentage by which the hospital's Medicaid inpatient utilization rate exceeds one standard deviation above the State's Medicaid inpatient utilization rate, as described in subsection (k)(3) of this Section. This is done by finding the ratio of each hospital's percent Medicaid utilization to the State's mean plus one standard deviation percent Medicaid value. These ratios are then summed and each hospital's proportion of the total is calculated. These proportional values are then multiplied by each hospital's most recent completed fiscal year Medicaid inpatient utilization data (adjusted based upon historical utilization and projected increases in utilization). These weighted values are summed and each hospital's proportion of the summed weighted value is calculated. Each individual hospital's proportional value is then multiplied against the \$5 million pool of money available after the \$5 per day base add-on has been subtracted.

D) The total dollar amount calculated for each qualifying hospital under subsection (g)(1)(C) of this Section **above**, plus the initial \$5 per day add-on amount calculated for each qualifying hospital under subsection (g)(1)(B) of this Section **above**, is then divided by the Medicaid inpatient utilization data (adjusted based upon historical utilization and projected increases in utilization) to arrive at per day add-on value. Hospitals qualifying under subsection (a)(2) of this Section, will receive the minimum adjustment of \$5 per inpatient day. The adjustments calculated under this subsection are subject to the limitations described in subsection (j) of this Section.

2) Medicaid Percentage Adjustment for hospitals defined in Section

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148.25(b)(1), excluding hospitals defined in Section 148.25(b)(1)(A).

A) In addition to the adjustment methodology described in subsection (g)(1) of this Section **above**, all DSH hospitals described in subsections (a)(1), (2), (3), (4), and (5) of this Section shall receive a payment adjustment which shall be calculated annually as follows:

B) The payment adjustment shall be calculated based upon the hospital's Medicaid inpatient utilization rate, as defined in subsection (k)(5) of this Section, and subject to subsections (h) and (i) below, as follows:

i) Hospitals with a Medicaid inpatient utilization rate below the mean Medicaid inpatient utilization rate shall receive a payment adjustment of \$25;

ii) Hospitals with a Medicaid inpatient utilization rate that is equal to or greater than the mean Medicaid inpatient utilization rate but less than one standard deviation above the mean Medicaid inpatient utilization rate shall receive a payment adjustment of \$25 plus \$1 for each one percent that the hospital's Medicaid inpatient utilization rate exceeds the mean Medicaid inpatient utilization rate;

iii) Hospitals with a Medicaid inpatient utilization rate that is equal to or greater than one standard deviation above the mean Medicaid inpatient utilization rate but less than 1.5 standard deviations above the mean Medicaid inpatient utilization rate shall receive a payment adjustment of \$40 plus \$7 for each one percent that the hospital's Medicaid inpatient utilization rate exceeds one standard deviation above the mean Medicaid inpatient utilization rate;

iv) Hospitals with a Medicaid inpatient utilization rate that is equal to or greater than 1.5 standard deviations above the mean Medicaid inpatient utilization rate shall receive a payment adjustment of \$90 plus \$2 for each one percent that the hospital's Medicaid inpatient utilization rate exceeds 1.5 standard deviations above the mean Medicaid inpatient utilization rate.

C) For a hospital organized under the University of Illinois Hospital Act, as described in Section 148.25(b)(1)(B), the amount calculated pursuant to subsection (g)(2)(B) of this Section **above** shall be increased by \$60 per day.

D) The Medicaid percentage adjustment payment, calculated in accordance with this subsection (g)(2), to a hospital, other

## DEPARTMENT OF PUBLIC AID

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than a hospital and/or hospitals organized under the University of Illinois Hospital Act, as described in Section 148.25(b)(1)(B), shall not exceed \$155 per day for a children's hospital, as described in subsection (a)(5) of this Section, and shall not exceed \$215 per day for all other hospitals.

E) The amount calculated pursuant to subsections (g)(2)(B) through (g)(2)(D) of this Section above shall be adjusted on October 1, 1993, and annually thereafter by a percentage equal to the lesser of:

i) The increase in the national hospital market basket price proxies (DRI) hospital cost index for the most recent 12 month period for which data are available;

or

ii) The percentage increase in the statewide average hospital payment rate, as described in subsection (k)(8) of this Section, over the previous year's statewide average hospital payment rate.

F) The amount calculated pursuant to subsection (g)(1) of this Section above for hospitals described in Section 148.25(b)(1)(A) shall be no less than the DSH rates in effect on June 1, 1992, except that this minimum shall be adjusted on the first day of July of each year by the annual percentage change in the per diem cost of inpatient hospital services as reported on the two most recent annual Medicaid cost reports. The per diem cost of inpatient hospital services is calculated by dividing the total allowable Medicaid costs by the total allowable Medicaid days.

G) The amount calculated pursuant to subsections (g)(1) and (g)(2)(B) through (g)(2)(E) of this Section above, as adjusted pursuant to subsections (h) and (i) of this Section below, shall be the inpatient payment adjustment in dollars for the applicable DSH determination year, subject to the limitations described in subsections (g)(2)(D) and (j) of this Section, and the adjustment described in subsection (g)(2)(F) of this Section above. The adjustments calculated under subsections (g)(1) and (g)(2)(B) through (g)(2)(F) of this Section shall be paid on a per diem basis and shall be applied to each covered day of care provided.

3) Department of Human Services (DHS) State-Operated Facility Adjustment for hospitals defined in Section 148.25(b)(6). Department of Human Services State-operated facilities qualifying under subsection (a)(2) of this Section shall receive an adjustment for inpatient services provided on or after March 1, 1995. Effective October 1, 2000, the the amount of--that adjustment payment shall be calculated as follows:

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A) The amount of the adjustment is based on a State DSH Pool. The State DSH Pool pool amount shall be the lesser of the federal DSH allotment for mental health facilities as determined in section 1923(b) of the Social Security Act, minus the estimated DSH payments to such facilities that are not operated by the State, or the result of calculated--by subtracting the estimated DSH payment adjustments made under subsections (g)(1) through (g)(2) of this Section above and Section 148.170(f)(2) from the aggregate DSH payment allotment as provided for in Section 1923(f) of the Social Security Act adjustment--set--by--the--Health-Care Financing-Administration--(HCFA)--in--accordance--with--Public Law-102-234.

B) The State DSH Pool amount is then allocated to hospitals defined in Section 148.25(b)(6) that qualify for DSH adjustments by multiplying the State DSH Pool amount by each hospital's ratio of uncompensated care costs, from the most recent final cost report, Medicaid--inpatient--utilization (adjusted--based--upon--historical--utilization--and--projected increases--in--utilization) to the sum of all qualifying hospitals' uncompensated care costs Medicaid--inpatient utilization.

C) The adjustment calculated in (g)(3)(B) of this Section above shall meet the limitation described in subsection (j)(4) of this Section below.

D) The adjustment calculated pursuant to subsection (g)(3)(B) of this Section above, for each hospital defined in Section 148.25(b)(6) that qualifies for DSH adjustments, is then divided by four the Medicaid--inpatient--utilization--data (adjusted--based--upon--historical--utilization--and--projected increases--in--utilization) to arrive at a quarterly per--day adjustment. This amount is subject to the limitations described in subsection (j) of this Section. The adjustment described in this subsection (g)(3)(D) shall be paid on a quarterly per--item basis and--shall--be--applied--to--each Medicaid--covered--day--of--care--provided.

h) Inpatient Adjustor for Children's Hospitals. For a children's hospital, as defined in subsection (a)(5) of this Section, the payment adjustment calculated under subsection (g)(2) of this Section above shall be multiplied by 2.0.

i) Inpatient Adjustor for Hospitals Organized Under the University of Illinois Hospital Act. For a hospital and/or hospitals organized under the University of Illinois Hospital Act, as defined in Section 148.25(b)(1)(B), the payment adjustment calculated under subsection (g)(2) of this Section above shall be multiplied by 1.50.

j) DSH Adjustment Limitations.

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- 1) Hospitals that qualify for DSH adjustments under this Section shall not be eligible for the total DSH adjustment if, during the DSH determination year, the hospital discontinues the provision of non-emergency obstetrical care (the provisions of this subsection shall not apply to those hospitals described in 89 Ill. Adm. Code 149.50(c)(1) through (c)(4) or those hospitals that have not offered nonemergency obstetric services as of December 22, 1987). In this instance, the adjustments calculated under subsections (g)(1) and (g)(2) shall cease effective on the date that the hospital discontinued the provision of such non-emergency obstetrical care.
- 2) Inpatient Payment Adjustments based upon DSH Determination Reviews. Appeals based upon a hospital's ineligibility for DSH payment adjustments, or their payment adjustment amounts, in accordance with Section 148.310(b), which result in a change in a hospital's eligibility for DSH payment adjustments or a change in a hospital's payment adjustment amounts, shall not affect the DSH status of any other hospital or the payment adjustment amount of any other hospital that has received notification from the Department of their eligibility for DSH payment adjustments based upon the requirements of this Section.
- 3) DSH Payment Adjustment. In accordance with Public Law 102-234, if the aggregate DSH payment adjustments calculated under this Section do not meet the State's final DSH Allotment as determined by the Health Care Financing Administration (HCFA), DSH payment adjustments calculated under this Section shall be adjusted to meet the State DSH Allotment. This adjustment shall first be applied to DSH payments made under subsection (g)(3) of this Section above. If further adjustments are necessary, then DSH payments made under subsection (g)(2) of this Section above shall be adjusted, with the DSH payments under subsection (g)(1) of this Section being adjusted last.
- 4) Omnibus Budget Reconciliation Act of 1993 (OBRA '93) Adjustments. In accordance with Public Law 103-66, adjustments to individual hospitals' disproportionate share payments shall be made if the sum of estimated Medicaid payments (inpatient, outpatient, and disproportionate share) to a hospital exceed the costs of providing services to Medicaid clients and persons without insurance. Federal upper payment limit requirements (42 CFR 447.272) shall be considered when calculating the OBRA '93 adjustments. The adjustments shall reduce disproportionate share spending until the costs and spending (described in this subsection (3)(4)) are equal or until the disproportionate share payments are reduced to zero. In this calculation, persons without insurance costs do not include contractual allowances. Hospitals qualifying for DSH payment adjustments must submit the

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- 5) Medicaid inpatient utilization rate limit. Hospitals that qualify for DSH payment adjustments under this Section shall not be eligible for DSH payment adjustments if the hospital's Medicaid inpatient utilization rate, as defined in subsection (k)(5) of this Section below, is less than one percent.
- k) Inpatient Payment Adjustment Definitions. The definitions of terms used with reference to calculation of the inpatient payment adjustments are as follows:
- 1) "Base fiscal year" means, for example, the hospital's fiscal year ending in 1991 for the October 1, 1993 DSH determination year, the hospital's fiscal year ending in 1992 for the October 1, 1994, DSH determination year, etc.
  - 2) "DSH determination year" means the 12 month period beginning on October 1 of the year and ending September 30 of the following year.
  - 3) "Mean Medicaid inpatient utilization rate" means a fraction, the numerator of which is the total number of inpatient days provided in a given 12-month period by all Medicaid-participating Illinois hospitals to patients who, for such days, were eligible for Medicaid under Title XIX of the Federal Social Security Act (42 USC 1396a et seq.), and the denominator of which is the total number of inpatient days provided by those same hospitals. Title XIX specifically excludes days of care provided to Family and Children Assistance (formerly known as General Assistance) and ~~Ad-to-the-Medicaid-indigent-(AMI)-days~~ but does include the types of days described in subsection (c)(3) of this Section. In this subsection (k)(3), the term "inpatient day" includes each day in which an individual (including a newborn) is an inpatient in the hospital whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.
  - 4) "Mean Medicaid obstetrical inpatient utilization rate" means a fraction, the numerator of which is the total Medicaid (Title XIX) obstetrical inpatient days, as defined in subsection (k)(7) of this Section below, provided by all Medicaid-participating Illinois hospitals providing obstetrical services to patients who, for such days, were eligible for Medicaid under Title XIX of the Federal Social Security Act (42 USC 1396a et seq.), and the denominator of which is the total Medicaid (Title XIX) inpatient days, as defined in subsection (k)(9) of this Section below, for all such hospitals. That information shall be derived from claims for applicable services provided in the Medicaid obstetrical inpatient utilization rate base year which were subsequently adjudicated by the Department through the last day of June preceding the DSH determination year and contained within



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- the Department's paid claims data base.
- 5) "Medicaid inpatient utilization rate" means a fraction, the numerator of which is the number of a hospital's inpatient days provided in a given 12-month period to patients who, for such days, were eligible for Medicaid under Title XIX of the federal Social Security Act (42 USC 1396a et seq.) and the denominator of which is the total number of the hospital's inpatient days in that same period. Title XIX specifically excludes days of care provided to Family and Children Assistance (formerly known as General Assistance) ~~and Add-to-the-Medicare-Indigent (AMI)-days~~ but does include the types of days described in subsection (c)(3) of this Section. In this subsection (k)(5), the term "inpatient day" includes each day in which an individual (including a newborn) is an inpatient in the hospital whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.
- 6) "Medicaid obstetrical inpatient utilization rate" means a fraction, the numerator of which is the Medicaid (Title XIX) obstetrical inpatient days, as defined in subsection (k)(7) of this Section below, provided by a Medicaid-participating Illinois hospital providing obstetrical services to patients who, for such days, were eligible for Medicaid under Title XIX of the federal Social Security Act (42 USC 1396a et seq.), and the denominator of which is the total Medicaid (Title XIX) inpatient days, as defined in subsection (k)(9) of this Section below provided by such hospital. This information shall be derived from claims for applicable services provided in the Medicaid obstetrical inpatient utilization rate base year which were subsequently adjudicated by the Department through the last day of June preceding the DSH determination year and contained within the Department's paid claims data base.
- 7) "Medicaid (Title XIX) obstetrical inpatient days" means hospital inpatient days which were subsequently adjudicated by the Department through the last day of June preceding the DSH determination year and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of Social Security Act, with an ICD-9-CM principal diagnosis code of 640.0 through 648.9 with a 5th digit of 1 or 2; 650; 651.0 through 659.9 with a 5th digit of 1, 2, 3, or 4; 660.0 through 669.9 with a 5th digit of 1, 2, 3, or 4; 670.0 through 676.9 with a 5th digit of 1 or 2; or V27 through V27.9; or V30 through V39.9; or any ICD-9-CM principal diagnosis code that is accompanied with a surgery procedure code between 72 and 75.99; and specifically excludes Medicare/Medicaid crossover claims.
- 8) "Statewide average hospital payment rate" means the hospital's

## DEPARTMENT OF PUBLIC AID

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- 9) alternative reimbursement rate, as defined in Section 148.270(a). "Total Medicaid (Title XIX) inpatient days", as referred to in subsections (k)(4) and (k)(6) of this Section above, means hospital inpatient days, excluding days for normal newborns, which were subsequently adjudicated by the Department through the last day of June preceding the DSH determination year and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of the Social Security Act, and specifically excludes Medicare/Medicaid crossover claims.
- 10) "Medicaid obstetrical inpatient utilization rate base year" means, for example, fiscal year 1992 for the October 1, 1993, DSH determination year; fiscal year 1993 for the October 1, 1994, DSH determination year; etc.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Public Information, Rulemaking, and Organization

- 2) Code Citation: 2 Ill. Adm. Code 1750

- 3) Section Numbers:

	Adopted Action
1750.200	Amended
1750.210	Amended
1750.310	Amended
1750.320	Amended
1750.330	Amended
1750.340	Amended
1750.350	Amended
1750.370	Amended

- 4) Statutory Authority: 20 ILCS 3930

- 5) Effective Date of Amendments: March 20, 2000

- 6) Does this amendment contain an automatic repeal date? No

- 7) Does this amendment contain an incorporation by reference? No

- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

- 9) Notice of Proposal Published in Illinois Register: These are internal rules which are not subject to first notice requirements.

- 10) Has JCAR issued a Statement of Objection to these Amendments? No

- 11) Differences between proposed and final version: None

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? These amendments are not subject to JCAR review.

- 13) Will this amendment replace an emergency amendment currently in effect?  
No

- 14) Are there any amendments pending on this part? No

- 15) Summary and Purpose of Amendments: These amendments change the names of two Authority Committees and clarify their powers and duties, provide for the participation of designees of Authority members on certain committees,

## ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY

## NOTICE OF ADOPTED AMENDMENTS

- make technical changes to statutory citations, and make references gender neutral.

- 16) Information and questions regarding these adopted amendments shall be directed to:

Robert P. Boehmer, General Counsel  
Illinois Criminal Justice Information Authority  
120 S. Riverside Plaza, Suite 1016  
Chicago IL 60606-3997

TDD: (312) 793-4170

The full text of the adopted amendments begins on the next page.

## ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY

## NOTICE OF ADOPTED AMENDMENTS

TITLE 2: GOVERNMENTAL ORGANIZATION  
 SUBTITLE E: MISCELLANEOUS STATE AGENCIES  
 CHAPTER XI: ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY

PART 1750  
 PUBLIC INFORMATION, RULEMAKING AND ORGANIZATION

## SUBPART A: PUBLIC INFORMATION

Section  
 1750.100 Applicability  
 1750.110 Public Requests  
 1750.120 Public Submissions

## SUBPART B: RULEMAKING

Section  
 1750.200 Procedure  
 1750.210 Public Hearings

## SUBPART C: ORGANIZATION

Section  
 1750.310 Preamble  
 1750.320 Officers  
 1750.330 Meetings  
 1750.340 Committees  
 1750.350 Authority Staff  
 1750.360 Amendment of Organizational Rules  
 1750.370 Unspecified Matters  
 1750.380 Effective Date

AUTHORITY: Implementing and authorized by Executive Order 82-2 and the Illinois Criminal Justice Information Act [20 ILCS 3930].

SOURCE: Organizational rules adopted at 7 Ill. Reg. 8239, effective July 5, 1983; Public Information and Rulemaking rules adopted and codified at 8 Ill. Reg. 2457, effective February 9, 1984; organizational rules repealed by Operation of Law October 1, 1984; amended at 9 Ill. Reg. 17358, effective October 28, 1985; amended at 17 Ill. Reg. 21377, effective December 3, 1993; amended at 24 Ill. Reg. 5650 —, effective March 20, 2000.

## SUBPART B: RULEMAKING

## Section 1750.200 Procedure

5652

## ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY

## NOTICE OF ADOPTED AMENDMENTS

- a) Rules may be proposed by any member of the Illinois Criminal Justice Information Authority (hereinafter called "the Authority"), or the Executive Director. However, rules shall be issued only by the Authority.
- b) Any interested person may petition the Executive Director of the Authority to make, amend or repeal a rule. The Executive Director shall refer all petitions with staff review and recommendations to the Legislation and Regulations Committee of the Authority which shall decide whether or not to recommend for further action.
- 1) The petition shall be addressed to:

Executive Director  
 Illinois Criminal Justice Information Authority  
 120 S. Riverside Plaza  
 Chicago, Illinois 60606

- 2) The petition shall contain a clear statement of reasons for the proposed rule, amendment or repeal and the exact language of the suggested new rule or amendment.
- c) All rules promulgated by the Authority shall be in accordance with the procedures for issuing proposed rules and for their ultimate adoption in accordance with the Administrative Procedure Act ~~ffir-Rev-Stat-1991-chr-1277-par-1-et-seq~~ [5 ILCS 100/1-i-et-seq].
- d) Rules adopted by the Authority shall be available for public inspection during normal working hours at 120 South Riverside Plaza, Chicago, Illinois.

(Source: Amended at 24 Ill. Reg. 5650 —, effective March 20, 2000)

## Section 1750.210 Public Hearings

- a) The Chair ~~Chairman~~ or a committee chair ~~chairman~~ may convene public hearings on proposed rulemaking whenever the interest of the State would be best served by such proceedings in order to establish a record of public comment.
- b) Formal notice of a public hearing shall be given upon at least ten (10) business days notice in accordance with the Illinois Open Meetings Act ~~ffir-Rev-Stat-1991-chr-1027-par-41-et-seq~~ [5 ILCS 120/4]. The notice shall include the date, time and place of the proceedings.
- c) Minutes of public hearings shall be recorded and shall be available for public inspection.

(Source: Amended at 24 Ill. Reg. 5650 —, effective March 20, 2000)

## SUBPART C: ORGANIZATION

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## ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY

## NOTICE OF ADOPTED AMENDMENTS

conduct of a meeting shall be removed from the place of meeting by order of the Chair Chairman.

- g) Agenda--The Chair Chairman shall prescribe the agenda for all Authority meetings. Any Authority member may have an item placed on the agenda by notifying the Chair Chairman in writing in advance of the mailing of the agenda. Such notification also should include a copy of any written materials that the Authority member wishes distributed to the Authority members. In every agenda, except at special meetings, there shall be a category entitled "New Business" for the initiation of matters not included in the agenda for that meeting. However, new business matters that would adversely affect the rights of any party(ies) may not be finally acted on unless the party(ies) affected has been given prior written notice thereof.
- h) Notice--An agenda, together with a notice of the time and place of all regular meetings shall be mailed to Authority members at least ten (10) business days prior to the meeting date. The Chair Chairman may postpone or reschedule any regular or special meeting upon at least 24 hours notice--by telephone, mail or equivalent--prior to the scheduled meeting. Notice of the rescheduled meeting date shall be provided at least 24 hours in advance. However, no rescheduled regular or special meeting which is to include public hearings or regulatory or rulemaking proceedings shall be rescheduled without notice being mailed at least ten (10) business days prior to the rescheduled meeting date.
- i) Expenses--Authority members shall be entitled to reimbursement for reasonable expenses incurred in connection with their duties.

(Source: Amended at 24 Ill. Reg. 5656 --, effective March 20, 2000)

## Section 1750.340 Committees

- a) Committee Structure--The Authority shall have both ad hoc and standing committees.
- b) Membership--The Chair Chairman shall appoint all committee Chairmen and vice chairs Chairmen. Except for the Appeals Committee, standing committees shall consist of at least seven members of the Authority appointed by the Chair Chairman. Ad Hoc Committees shall include at least one Authority member, who shall be appointed by the Chair Chairman. The Chair Chairman may appoint non-Authority members to an Ad Hoc Committee. The members of all committees shall serve at the pleasure of the Chair Chairman. The Chair Chairman and Vice Chair Chairmen, ex officio, shall be voting members of all committees.
- c) Meetings--Either the Chair Chairman or a committee Chair Chairman may schedule a committee meeting.
- d) Quorum--No business may be conducted by a committee unless a majority of the number of committee members, including either the committee

## ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY

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- chair Chairman or vice chair Chairman, are present. Members may be present via electronic means, including but not limited to, telephoner, which--includes conference calls and video conferencing. After a quorum is announced, no committee vote may be taken unless at least three (3) committee members are present at the time of the vote.
- e) Public Hearings--The Chair Chairman or a committee chair Chairman may convene public hearings, upon at least ten (10) business days notice, in order to establish a record of public comment on proposed rules, regulations or legislation. The presence of a majority of the number of committee members shall not be required in order to conduct public hearings.
- f) Participation--With the consent of a committee chair Chairman, representatives of any Authority member, specifically designated to the Chair Chairman of the Authority, may participate in any committee meeting for discussion purposes. Members of the Authority who are not committee members shall have the right to participate in committee meetings and shall have the right to vote. The Chair Chairman of the Authority may designate any Authority member to become an ad hoc voting member of a committee when necessary to ensure a quorum.
- g) Designees--Except for an Authority member appointed as a member of the general public, an Authority member may appoint a deputy director, Assistant director, or similar senior level staff person as the Authority member's designee to serve as a voting member on the Planning and Research Committee and Information Systems Committee.
- h) Notice--A committee meeting shall be scheduled upon at least 24 hours notice--by telephone, mail or equivalent--to the committee members. However, notice for any committee meeting involving public hearings or regulatory or rulemaking proceedings must be mailed at least ten (10) business days prior to the meeting date.
- i) Oversight of Committees--In order to provide for oversight by the Authority of actions taken by any committee, whether ad hoc or standing, Authority members shall be notified--by phone, mail or equivalent--of all motions passed by a particular committee, within five (5) business days of any committee meeting, or prior to the next meeting of that committee, or before the next meeting of the Authority, whichever is sooner. Within ten (10) business days of receipt of such information, a special meeting of the Authority may be convened upon the request of five (5) Authority members, for the purpose of fully discussing any action taken by a committee and to supersede the authorization granted to the committee to act on the Authority's behalf in any particular matter.
- j) Minutes and Reports--Minutes of all committee meetings shall be kept. Copies of minutes shall be furnished to all members of the Authority within 42 days following each committee meeting. Minutes and reports shall be the responsibility of the committee secretary. A committee Chair Chairman may designate anyone to serve as committee secretary.

## ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY

## NOTICE OF ADOPTED AMENDMENTS

k) Rules--Committees shall be governed by these Organizational Rules.  
 l\*) Ad Hoc Committees--The Chair Chairman may create Ad Hoc Committees. Ad Hoc Committees shall exercise those powers as are delegated to them by the Chair Chairman, these Organizational Rules, and as are appropriate to their mission and responsible. Ad Hoc Committee reports and recommendations shall be submitted to the Chair Chairman and shall be advisory only.

m) Standing Committees--The Authority shall establish the following standing committees with the powers and duties stated.

1) Budget Committee--The Budget Committee shall:

A) review the budget of the Authority and oversee the Criminal Justice Information Systems Fund; funds made available to further the purposes of the Illinois Criminal Justice Information Act;

C) oversee the grant award procedures of the Authority; and  
 D) present testimony and advocate the Authority's budget request before the Governor and General Assembly.

2) Information Systems Operations--and--Audits Committee--The Information Systems Operations and Audits Committee shall:

A) review and monitor the development and operation of comprehensive criminal justice information systems in Illinois that are being designed or have been developed and are operated by the Authority; and  
 B) oversee the annual and periodic audits of the state central repositories as provided in the Illinois Criminal Justice Information Act.

C) evaluate programs and make recommendations regarding the proper reporting of automated dispositions to the Department of State Police by state's attorneys and clerks of the circuit courts.

3) Legislation and Regulations Committee--The Legislation and Regulations Committee shall:

A) review legislation and regulations proposed by Authority staff and other agencies which have systemic impact on criminal justice information;

B) provide testimony and make recommendations to the Governor and General Assembly regarding proposed legislation and regulations, as provided in the Illinois Criminal Justice Information Act;

C) study and recommend regulations to ensure the privacy and security of criminal history record information as required by the Illinois Criminal Justice Information Act; and

D) provide testimony and act as an advocate before the Joint Committee on Administrative Rules in favor of those privacy and security and other rules and regulations proposed by the

## ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY

## NOTICE OF ADOPTED AMENDMENTS

Authority as required by the Illinois Criminal Justice Information Act.

4) Planning and Research and Policy Committee--The Planning and Research and Policy Committee shall:

A) review the research projects, proposals and programs of the Authority; and

B) plan, evaluate and correlate State and local programs as provided in the Illinois Criminal Justice Information Act; and  
 7--particularly with respect to the proper reporting of automated dispositions to the Department of State Police--by state's attorneys and clerks of the circuit courts.

C) oversee the establishment and operation of an institutional review board to ensure the protection of human research subjects.

5) Appeals Committee--The Appeals Committee shall hear all administrative appeals by individuals challenging the accuracy and completeness of criminal history record information. The Appeals Committee shall consist of three of the Authority's five members of the general public. The Chair Chairman of the Authority shall appoint the chair Chairman and members of the Appeals Committee. If one or more of the members of the Appeals Committee are unavailable to hear an appeal, then the Chair Chairman of the Authority, or in his or her absence the Vice Chair Chairman, shall appoint replacement(s) for the unavailable member(s) for the limited purpose of hearing the appeal in question.

n) With the advice and consent of the chair of any standing committee, the Chair of the Authority may create Advisory Committees to a standing committee. The Chair may appoint non-Authority members to an Advisory Committee. The members of an Advisory Committee shall serve at the pleasure of the Chair. Advisory Committees shall exercise those powers as are delegated by the committee chair. These organizational rules and rules are appropriate to their mission and responsibilities. Advisory Committee reports and recommendations shall be submitted to the committee chair and shall be advisory only.

(Source: Amended at 24 Ill. Reg. 5656 --, effective March 20, 2000)

## Section 1750.350 Authority Staff

a) Executive Director--The Executive Director shall be appointed by and shall serve at the pleasure of the Governor. The Executive Director shall function as the chief executive officer of the Authority and in that capacity is authorized to bind the Authority in contractual and other matters affecting the general operations and responsibilities of the Authority, as provided in the Illinois Criminal Justice

## ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY

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Information Act. The Executive Director He shall devote his or her full time to assisting the Authority in performance of its duties and in fulfilling its responsibilities. The Executive Director shall regularly review and from time to time recommend to the Authority appropriate amounts for the establishment of user's fees to be collected from local criminal justice agencies, as provided in the Illinois Criminal Justice Information Act. He or she may also exercise such additional powers as may be delegated to him or her from time to time by the full Authority or its committees.

- b) Authority Staff--The Authority Staff shall consist of such administrative, professional, clerical, and other personnel as deemed required by the Executive Director to assist the Authority in performing its duties and fulfilling its responsibilities. The Authority staff shall be organized by the Executive Director as he or she may deem appropriate. Staff members shall be employed by the Executive Director in accordance with the Personnel Code ~~(4110--Rev. Stat.--1991--ch-127--par-136--(1)-(4)-(et-seq))~~ [20 ILCS 415/1-(et-seq)], and will perform duties as requested or directed by him or her.

(Source: Amended at 24 Ill. Reg. 5650 <sup>3</sup>, effective March 20, 2000)

## Section 1750.370 Unspecified Matters

All matters not specified by these Organizational Rules shall be governed by Executive Order Number (82-2), dated April 1, 1982, the Illinois Criminal Justice Information Act ~~(4110--Rev. Stat.--1991--ch-367--par-216--(et-seq))~~ [20 ILCS 3930/41], the Open Meetings Act ~~(4110--Rev. Stat.--1991--ch-189--par-4--(et-seq))~~ [5 ILCS 120/1-(et-seq)], the Illinois Administrative Procedure Act--~~(4110--Rev. Stat.--1991--ch-127--par-136--(1)-(4)-(et-seq))~~ [5 ILCS 100/1-(et-seq)], and the latest edition of Robert's Rules of Order whenever applicable.

(Source: Amended at 24 Ill. Reg. 5650 <sup>3</sup>, effective March 20, 2000)

## STATE BOARD OF EDUCATION

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: School Construction Program

2) Code Citation: 23 Ill. Adm. Code 151

<u>Section Number:</u>	<u>Adopted Action:</u>
151.10	Amendment
151.20	Amendment
151.70	Repeal
151.100	New Section
151.110	New Section
151.120	New Section
151.130	New Section
151.135	New Section
151.140	New Section

4) Statutory Authority: 105 ILCS 230

5) Effective Date of Rules: March 17, 2000

- 6) Does this amendment contain an automatic repeal date? No

- 7) Does this amendment contain incorporations by reference? No

- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

- 9) Has JCAR issued a Statement of Objection to these amendments? No

- 10) Differences between proposal and final version:

- Statutory references to the School Construction Law have been changed to 105 ILCS 230.
- The statutory citation of 105 ILCS 230/5-5 was added in the definition of "school maintenance project" in Section 151.110.
- The semicolons in Section 151.120(f), (f)(1), (f)(2), (f)(3) and (f)(5) were replaced with periods.
- The phrase, "set forth at 23 Ill. Adm. Code 110 (Program Accounting Manual)," was added in Section 151.140(b).

- 11) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

- 12) Will this amendment replace an emergency amendment currently in effect? No

- 13) Are there any amendments pending on this Part? No

STATE BOARD OF EDUCATION  
NOTICE OF ADOPTED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES  
SUBTITLE A: EDUCATION  
CHAPTER I: STATE BOARD OF EDUCATION  
SUBCHAPTER C: FINANCE

PART 151  
SCHOOL CONSTRUCTION PROGRAM

SUBPART A: SCHOOL CONSTRUCTION PROJECT GRANTS

Section	Purpose	Grant
151.10	Eligible Applicants	
151.20	Application for School Construction Project Grant	Entitlement
151.30	Application for School Construction Project Entitlement - Districts With a Population Exceeding 500,000	Project
151.35	Priority Ranking of Construction Grant Entitlements	Grant
151.40	Award of Construction Project Grant Entitlements	
151.50	Priority Ranking of Construction Grant Entitlements	
151.55	Needed Capacity for Unit Districts	
151.60	Grant Index	
151.70	Debt Service Grants [Repealed]	

SUBPART B: SCHOOL MAINTENANCE PROJECT GRANTS

Section	Purpose	Grant
151.100	Purpose: Eligible Applicants	
151.110	Definitions	
151.120	Application for School Maintenance Project Grants	Entitlement
151.130	Award of School Maintenance Project Grants - Applicants With a Population of 500,000 or Fewer	Project
151.135	Award of School Maintenance Project Grants - School Districts With a Population Exceeding 500,000	Grant
151.140	Terms of the Grant	

AUTHORITY: Implementing the School Construction Law [105 ILCS 230] and authorized by Section 5-55 of that Law.

SOURCE: Emergency rules adopted at 22 Ill. Reg. 2616, effective January 16, 1998, for a maximum of 150 days; emergency rules modified in response to JCAR objection at 22 Ill. Reg. 4500, emergency expired June 15, 1998; emergency rules adopted at 22 Ill. Reg. 6238, effective March 24, 1998, for a maximum of 150 days; emergency rules modified in response to JCAR objection at 22 Ill. Reg. 7703; adopted at 22 Ill. Reg. 12536, effective July 6, 1998; emergency amendment at 23 Ill. Reg. 11336, effective September 1, 1999, for a maximum of 150 days; amended at 24 Ill. Reg. 497, effective January 3, 2000; amended at 24 Ill. Reg. 5661, effective MAR 17 2000.

STATE BOARD OF EDUCATION  
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14) Summary and Purpose of Amendments: The amendments are in response to P.A. 91-38, effective June 15, 1999, which amends the School Construction Law. The new provisions establish the school maintenance project grant program and require that the State Board promulgate rules to implement the program. Public school districts, public university laboratory schools approved by the State Board, and charter schools are eligible to apply for school maintenance project grants.

The amendments define the five priority categories established in the law; set forth the application procedures and content; and establish a mechanism, based on the priority categories and applicant's need, for awarding grants when the appropriation is insufficient to fund all approved applications.

This rulemaking also eliminates the requirements pertaining to debt service grants, since the law prohibits the award of such grants after June 30, 1999.

15) Information and questions regarding this adopted amendment shall be directed to:

Ms. Nona Myers  
Division Administrator  
Illinois State Board of Education  
100 North First Street,  
Springfield, Illinois 62777-0001  
(217) 785-8779

The full text of the adopted amendments begins on the next page:



## STATE BOARD OF EDUCATION

## NOTICE OF ADOPTED AMENDMENTS

SUBPART A: SCHOOL CONSTRUCTION PROJECT GRANTSSection 151.10 Purpose

This Subpart Part implements the School Construction Law [105 ILCS 230/51], which requires that the State Board of Education:

- a) adopt standards under which the State Board will issue grant entitlements to school districts for school construction project grants to be made by the Capital Development Board; and
- b) determine the order of priority for school construction project grants to be made by the Capital Development Board; and
- c) make grants to school districts for debt service on approved school construction bonds.

(Source: Amended at 24 Ill. Reg. 5661 effective  
MAR 17 2000)

Section 151.20 Eligible Applicants

School districts that meet the requirements of the School Construction Law and this Subpart Part are eligible to apply for school construction project grant entitlements and debt service grants. A district's eligibility for a school construction project grant under the minimum enrollment requirements of Section 5-25(a) of the School Construction Law shall be determined using the district's most enrollment in prekindergarten through grade 12 as shown on the district's most recent Fall Enrollment/Housing Report.

(Source: Amended at 24 Ill. Reg. 5661 effective  
MAR 17 2000)

Section 151.70 Debt Service Grants (Repealed)

- a) A school district shall apply for a debt service grant entitlement and bond by submitting an application that includes a District Facilities
- b) Each application for a debt service grant for fiscal year 1999 must be received in the Springfield office of the State Board of Education by April 1, 1998. Applications shall be addressed as follows:

Illinois State Board of Education  
School Construction Program  
100 North First Street  
Springfield, Illinois 62777-0001

- c) For fiscal year 1999, eligibility for a debt service grant shall be contingent upon the State Board's receipt of an application addressed

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## STATE BOARD OF EDUCATION

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- as shown in subsection (b) of this Section by April 15, 1999.
- d) An application that is incomplete will be returned and will not be processed until it is complete. An application must be complete by the applicable filing deadline in order to be considered. All information contained in the application shall be subject to verification and correction by the State Board of Education.
- e) Each application shall include the following information:
  - 1) The date of the referendum for approved school construction bonds as defined in Section 5 of the School Construction Law;
  - 2) A copy of the ballot used at the referendum;
  - 3) A District Facilities Plan that complies with the requirements of Section 151.30(e)(1) through (e)(3) of this Part, unless the district has an approved District Facilities Plan on file with the State Board of Education as evidenced by receipt of a construction grant entitlement in which case the Plan may be incorporated into the application by reference;
  - 4) A copy of the board resolution issuing the approved school construction bonds and showing the principal amount sold and the date of sale; and
  - 5) A statement of assurance that the debt service grant funds shall be used only to retire principal of approved school construction bonds, restructure the debt service on such bonds, or abate the property taxes levied for the district's bond and interest fund by an amount identical to the amount of the debt service grant.
- f) The State Board of Education shall notify districts that meet the requirements of the School Construction Law and this Part of the amount of their grant awards and shall make grant payments through vouchers submitted to the Comptroller.
- g) The State Board of Education will verify that debt service grant funds have been expended for authorized purposes through review of districts' Annual Financial Reports.

(Source: Repealed at 24 Ill. Reg. 5661 effective  
MAR 17 2000)

SUBPART B: SCHOOL MAINTENANCE PROJECT GRANTSSection 151.100 Purpose: Eligible Applicants

- a) This Subpart implements the School Construction Law [105 ILCS 230], which requires that the State Board of Education issue grants for school maintenance projects.
- b) Any school district, charter school, or public university laboratory school approved by the State Board of Education pursuant to Section 18-8.05(K) of the School Code [105 ILCS 5/18-8.05(K)] may apply for a grant. An eligible applicant may apply for and receive more than one

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## STATE BOARD OF EDUCATION

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grant during a fiscal year.

(Source: Added at 24 Ill. Reg. 5661 effective  
MAR 17 2000)

## Section 151.110 Definitions

As used in this Subpart:

"Emergency project" means a project made necessary by a disaster described in Section 5-30(1) of the School Construction Law. Conditions caused by age or lack of timely maintenance shall not constitute an emergency. Costs of an emergency project that are covered by insurance may not be claimed as part of an emergency project.

"Grant" means a school maintenance project grant.

"Health/life safety project" means a project that is necessary to correct a violation of the Health/Life Safety Code for Public Schools (23 Ill. Adm. Code 180) or to provide handicapped accessibility or school security.

"Ongoing operational costs" means ordinary maintenance expenses incurred in the course of the applicant's operations, including expenses for employee salaries and benefits, materials, and supplies.

"Other project" means a project other than an emergency project, health/life safety project, State program priority project or permanent improvement project.

"Permanent improvement project" means a project designed to upgrade or install building systems (e.g., air conditioning, electrical or plumbing systems) or involving other improvements to a building or structure so that the building or structure is better adapted to the applicant's educational programs.

"School maintenance project" or "project" means a project, other than a school construction project as defined in Section 5-5 of the School Construction Law, intended to provide for the maintenance or upkeep of buildings or structures for educational purposes, but does not include ongoing operational costs (105 ILCS 230/5-5). A project may involve different types of work on a single building or structure, or may involve a single type of work (e.g., new roofing or windows) on several buildings or structures. Work on a project must have started on or after May 1, prior to the fiscal year for which a grant is

## STATE BOARD OF EDUCATION

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sought. There is no limit to the cost of a project; however, grant awards shall not exceed \$50,000 per project, and applicants shall provide a match from local funds equal to the grant amount requested.

"State program priority project" means a project that is necessary for energy conservation or that adapts a building or structure to better serve students in a specific program for which the applicant receives funding under the School Code (e.g., prekindergarten at-risk, school technology).

(Source: Added at 24 Ill. Reg. 5661 effective  
MAR 17 2000)

## Section 151.120 Application for School Maintenance Project Grants

a) An eligible applicant may apply for a grant by submitting an application on a form provided by the State Board of Education. A separate application shall be submitted for each project for which the applicant seeks a grant award.

b) Up to \$1 million shall be reserved each fiscal year for emergency projects. If funds, other than funds reserved for emergency projects, remain after the award of grants from the announced application cycle, a second application period will be held. If funds reserved for emergency grants remain at the end of the fiscal year, these funds shall be distributed for other approved projects from the latest application cycle.

c) An application for a grant for an emergency project shall be submitted directly to the State Board of Education by the deadline stipulated on the application. A copy shall also be sent to the regional superintendent of education. Emergency applications shall be submitted to the following address:

Illinois State Board of Education  
School Maintenance Project Program  
100 North First Street  
Springfield, Illinois 62777-0001

d) All other applications shall be submitted to the regional office of education two weeks prior to the application deadline announced by the State Board of Education for the fiscal year for which the grant is sought. The regional superintendent shall review and forward the applications to the State Board of Education at the address stipulated in subsection (c) of this section by the application deadline. An application that is incomplete shall be returned and shall not be processed until it is complete. An application must be complete by the applicable submission deadline in order to be considered. All

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information contained in the application shall be subject to verification and correction by the State Board of Education by such means as on-site inspection and review of documents.

5) Each application shall include the following information:

- 1) The names, addresses, and descriptions of the facilities included in the project.
- 2) A narrative description of the nature and scope of the project, including the starting and completion dates for the project.
- 3) The total cost of the project, amount and source of local match funds, and the requested grant amount.
- 4) The priority category of the project (see Section 151.130(b)(2) of this Part).
  - A) For an emergency project, the applicant shall indicate the date and nature of the emergency and the extent of building damage.
  - B) For a health/life safety project necessary to correct a code violation, the applicant shall identify the health/life safety work by amendment number.
- 5) For applicants that are seeking more than one grant in a fiscal year, the order in which the applicant wants its projects funded.
- 6) Such assurances as the State Board of Education may require, to include at least the following:
  - A) that the local board of education, in the case of school districts, or other school governing authority authorized the school maintenance project during a duly convened meeting; and
  - B) that the local board of education, in the case of school districts, or other school governing authority reserved local funds in an amount equal to the school maintenance project grant requested to meet the local match requirement.
- 9) Each application shall bear an original signature of the president of the local board of education or other school governing authority.

(Source: Added at 24 Ill. Reg. 5661 effective MAR 17 2000)

**Section 151.130 Award of School Maintenance Project Grants - Applicants With a Population of 500,000 or Fewer**

Grant awards to applicants with a population of 500,000 or fewer shall be made as provided in this Section.

- a) An applicant that submits a timely, complete and accurate application that is in compliance with the School Construction Law and this Support and that indicates that the applicant has a qualifying project shall be awarded a grant for the approved project provided that the

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b) appropriation is sufficient to fund the grant. If the appropriation for any fiscal year is insufficient to fund all approved projects, grants shall be awarded in the following order until the appropriation is exhausted.

- 1) Grants shall be awarded in rounds, with each applicant being allowed one approved project per round.
- 2) Within each round, grants shall be awarded in order of the five priorities established in Section 15-100(b) of the School Construction Law and as defined in Section 151.110 of this Part:
  - A) Emergency projects.
  - B) Health/life safety projects.
  - C) State priority projects.
  - D) Permanent improvement projects.
  - E) Other projects.
- 3) Within each priority, grants shall be awarded in order of the applicant's need index, proceeding from greatest to least.
  - A) For a school district applicant, the need index shall be determined by dividing the equalized assessed valuation per pupil in average daily attendance of the school district at the 90th percentile of wealth for districts of that type (i.e., elementary, high school, or unit) by the equalized assessed valuation per pupil in average daily attendance of the applicant.
  - B) For an applicant that does not possess property taxing authority, its equalized assessed valuation per pupil in average daily attendance shall be that of the school district in which the greatest number of the applicant's students reside.
  - C) For purposes of calculating the need index, the equalized assessed valuation and average daily attendance shall be taken from the general state aid claims filed in the fiscal year for which a grant is made. The average daily attendance to be used shall be the district's best three months average daily attendance.
- c) An approved application from the first round that is not funded because of an insufficient appropriation shall be placed ahead of new applications filed in a subsequent year, provided the applicant submits an updated application.

(Source: Added at 24 Ill. Reg. 5661 effective MAR 17 2000)

**Section 151.135 Award of School Maintenance Project Grants - School Districts With a Population Exceeding 500,000**

A school district with a population exceeding 500,000 that submits timely.

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complete and accurate applications in compliance with the School Construction Law and this Subpart shall be awarded grants in the amount provided by Section 5-100(c) of the School Construction Law.

(Source: Added at 24 Ill. Reg. 566.1.1 effective MAY 17 2000)

## Section 15-1.140 Terms of the Grant

- a). Grants shall be subject to the Illinois Grant Funds Recovery Act [30 ILCS 705]. Any grant funds not expended or legally obligated within two years after disbursement by the State shall be returned to the State Board of Education within 45 days.
- b). Grant funds may only be used for the project described in the approved application and shall be accounted for in compliance with applicable accounting rules set forth at 23 Ill. Adm. Code 110 (Program Accounting Manual). The applicant must provide local matching funds in an amount equal to the grant. If actual project expenditures are less than expected so that the amount of the grant is greater than 50 percent of the total project expenditures, the applicant shall refund the amount of the grant that is in excess of 50 percent of actual project expenditures. The applicant shall file a final expenditure report with the State Board of Education that describes the use of the grant funds.
- c). The applicant shall comply with the School Construction Law, this Subpart and all other applicable laws and regulations in completing a project.

(Source: Added MAY 17 2000 at 24 Ill. Reg. 566.1.1 effective MAY 17 2000)

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Public Information, Rulemaking and Organization
- 2) Code Citation: 2 Ill. Adm. Code 1925
- 3) 

<u>Section Numbers:</u>	<u>Adopted Action:</u>
1925.10	Amendment
1925.110	Amendment
1925.120	Amendment
1925.210	Amendment
1925.220	Amendment
1925.230	Amendment
1925.250	Repealed
1925.260	Amendment
1925.270	Amendment
1925.280	Amendment
1925.285	Amendment
1925.290	Amendment
1925.295	Amendment
1925.297	Amendment
1925.298	Amendment
1925 APPENDIX A	Repealed

- 4) Statutory Authority: The Illinois Health Facilities Planning Act [20 ILCS 3960] and the Illinois Administrative Procedure Act [5 ILCS 100/5-15]

- 5) Effective Date of Rulemaking: March 14, 2000

- 6) Does this rulemaking contain an automatic repeal date? No

- 7) Does this rulemaking contain incorporations by reference? No

- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

- 9) Notice of Proposal Published in Illinois Register: N/A

- 10) Has JCAR issued a Statement of Objections to these amendments? No

- 11) Difference(s) between proposal and final version: N/A

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? N/A

- 13) Will this rulemaking replace an emergency rule currently in effect? No



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- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: Part 1925 contains provisions regarding rulemaking procedures, public information requirements, and descriptive information regarding the organizational composition of the Health Facilities Planning Board. The purpose of this rulemaking is to remove language that is no longer applicable and to revise existing language to reflect current statutory and operational requirements.
- 16) Information and questions regarding these adopted rules shall be directed to:
- Donald Jones  
Health Facilities Planning Board  
Division of Facilities Development  
525 West Jefferson, 2nd floor  
Springfield, Illinois 62761  
217-782-3516  
Fax: 217-785-4308  
TTY (for hearing impaired only): 800-547-0466  
E-mail: djones@dph.state.il.us

The full text of the Adopted Amendments begins on the next page:

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- TITLE 2: GOVERNMENTAL ORGANIZATION  
SUBTITLE B: MISCELLANEOUS STATE AGENCIES  
CHAPTER XVIII: DEPARTMENT OF PUBLIC HEALTH/  
HEALTH FACILITIES PLANNING BOARD  
PART 1925  
PUBLIC INFORMATION, RULEMAKING AND ORGANIZATION  
SUBPART A: PUBLIC INFORMATION

Section  
1925.10 Procedures for the Public to Obtain Information

## SUBPART B: RULEMAKING

Section  
1925.110 Rulemaking  
1925.120 Request Petition for Adoption of Rules

## SUBPART C: ORGANIZATION

Section  
1925.210 Name, Statutory Authority and Composition  
1925.220 Appointment and Terms of Office  
1925.230 Officers and Committees  
1925.240 Executive Secretary  
1925.250 Description and Chart of State Board Organization (Repealed)  
1925.260 Meetings  
1925.270 Quorum  
1925.280 Matters Requiring Items-Warranting State Board Action  
1925.285 Conflict of Interest  
1925.290 Renumeration and Reimbursement  
1925.292 Rules of Order  
1925.295 Official Headquarters  
1925.297 Records and Reports  
1925.298 Amendment

## APPENDIX A Chart of Organization of the State Board (Repealed)

AUTHORITY: Implementing Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15] and authorized by Section 12(2) of the Illinois Health Facilities Planning Act [20 ILCS 3960/12].

SOURCE: Adopted at 2 Ill. Reg. 187, effective July 26, 1978; amended at 3 Ill. Reg. 8, p. 57, effective February 18, 1979; amended at 4 Ill. Reg. 25, p. 187, effective June 11, 1979; amended at 3 Ill. Reg. 52, p. 118, effective January

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1, 1980; amended at 5 Ill. Reg. 4995, effective April 22, 1981; amended at 6 Ill. Reg. 7221, effective June 9, 1982; amended at 6 Ill. Reg. 11484, effective September 9, 1982; amended at 7 Ill. Reg. 7316, effective May 31, 1983; amended at 8 Ill. Reg. 11518, effective June 27, 1984; codified at 8 Ill. Reg. 16340; amended at 9 Ill. Reg. 6276, effective April 24, 1985; amended at 11 Ill. Reg. 15649, effective September 14, 1987; amended at 24 Ill. Reg. 5671, effective March 14, 2000.

## SUBPART A: PUBLIC INFORMATION

## Section 1925.10 Procedures for the Public to Obtain Information

Pursuant to Section 5-15(a)(2) of the Illinois Administrative Procedure Act and the Freedom of Information Act [5 ILCS 140], as amended, the public can obtain information or make submissions or requests on subjects, programs or activities of the State Board by contacting the Executive Secretary at the official headquarters. Information available includes, but is not limited to, applications for Certificate of Need, copies of the Health Facilities Planning Board's administrative rules, and the Inventory of Health Care Facilities and Need Determinations.

(Source: Amended at 24 Ill. Reg. 5671, effective March 14, 2000)

## SUBPART B: RULEMAKING

## Section 1925.110 Rulemaking

- a) All proposed rules are referred by the State Board to the appropriate committee.
- b) Requests Petitions for the adoption of rules (Illinois Administrative Procedure Act) Section 5-145 shall be processed as prescribed in the Illinois Administrative Procedure Act [5 ILCS 100/5-145], --are submitted--to the Executive Secretary--Any petitions submitted to the Department of Public Health--shall be referred--to the Executive Secretary for presentation to the State Board (see Section 1925.120). Requesters Petitioners shall be notified of the disposition of their request petition.
- c) All proposed rules shall be distributed to the following agencies or interested groups:
  - 1) The Statewide Health Coordinating Council-SHEC
  - 2) All statewide health planning organizations in the State
  - 3) The Illinois Health Finance Authority and any other agency which establishes rates for health care facilities or HMG's in the State
  - 4) The State Health Planning-Development Agency (SHPDA), and
  - 5) Provider groups or organizations which have expressed an interest

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

- d) A notice of general rulemaking shall be published in one or more newspapers of general circulation in the State advising that copies of the rules are available at specified locations (the office of the State Board and the offices of the statewide health planning organizations) for public inspection and copying by interested persons.
- e) All proposed and adopted rulemaking of the State Board rules shall be published in the Illinois Register in accordance with as per the provisions of the Illinois Administrative Procedure Act. That interested persons may obtain copies by subscription to that publication.
- f) When rules have been adopted by the State Board and become effective after filing with the Office of the Secretary of State, copies of the adopted rules shall be available upon request distributed to the following agencies or interested groups:
  - 1) The Statewide Health Coordinating Council-SHEC
  - 2) All statewide health planning organizations in the State
  - 3) The Illinois Health Finance Authority and any other agency which establishes rates for health care facilities or HMG's in the State
  - 4) The State Health Planning-Development Agency (SHPDA)
  - 5) The Office of the Secretary of the Department of Health and Human Services; and
  - 6) All other interested parties requesting a copy.

(Source: Amended at 24 Ill. Reg. 5671, effective March 14, 2000)

## Section 1925.120 Request Petition for Adoption of Rules

- a) Pursuant to the requirements of Section 5-145 of the Illinois Administrative Procedure Act, as amended any interested person may contact petition the State Board requesting the promulgation, amendment or repeal of a rule.
- b) The form of the request petition, which may be handwritten or typewritten, shall be essentially as follows:
  - 1) Name, title (if any), organization (if any), address, and telephone number of the requester.
  - 2) Nature of action sought, i.e., promulgation of a rule, amendment of a rule, or repeal of a rule.
  - 3) Proposed text of the rule or amendment or identification of the rule to be repealed.
  - 4) Brief statement of the rationale for the requested action.
- c) Such requests are to be sent or delivered to the Executive Secretary at 595-535 West Jefferson, 3rd-floor Springfield, Illinois 62761--or to the Illinois Department of Public Health which shall refer them to

## HEALTH FACILITIES PLANNING BOARD

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**the Executive Secretary.**

a) Such requests shall be handled as follows:

- 1) The Executive Secretary will forward a copy of the request to the Chairman who will assign the matter for consideration by the State Board or for consideration by a committee of the State Board. If received at least two weeks prior to a scheduled regular meeting of the State Board, petition will be placed on the agenda of that meeting for referral to a committee of the State Board or alternative action.
- 2) If received less than two weeks prior to a scheduled regular meeting of the State Board, the petition will be carried over to the next following scheduled regular meeting and then placed on the agenda for referral to a committee of the State Board or alternative action.
- 3) The Executive Secretary will send copies of the petition to the members of the State Board as soon after receipt as is practicable.
- 4) If, after submission of the request petition to the State Board at its regular meeting or within 30 days after submission of the Request Petition, whichever period of time is the longer, the State Board has not initiated rulemaking proceedings in accordance with Section 5-35 of the Illinois Administrative Procedure Act, as amended, the request petition shall be deemed to have been denied.

(Source: Amended at 24 Ill. Reg. 5671-3, effective March 14, 2000)

## SUBPART C: ORGANIZATION

## Section 1925.210 Name, Statutory Authority, and Composition

- a) Name: The Health Facilities Planning Board hereinafter called the "State Board".
- b) Statutory Authority: The Illinois Health Facilities Planning Act Public Act 78-1156, [20 ILCS 3960], 1113 Rev. Stat. 1983, ch. 111 1/27-para. 1151-1168, approved August 27-1974, as amended hereinafter called the "Act".
- c) Composition: The composition of the State Board shall be as prescribed by the Act.
- 2) The State Board shall consist of 13 voting members and three non-voting ex-officio members. The Act stipulates that the Directors of the Illinois Departments of Public Aid, Mental Health and Public Health, or their designated representatives shall serve as the ex-officio non-voting representatives. The Act further specifies that of the 13 voting members 7 be consumers. A consumer is defined as any person other than a person (a) whose

## HEALTH FACILITIES PLANNING BOARD

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major occupation currently involves or whose official capacity within the last 12 months has involved the providing, administering or financing of any type of health care facility (b) who is engaged in health research or the teaching of health (c) who has a material financial interest in any activity which involves the providing, administering or financing of any type of health care facility or (d) who is or ever has been a member of the immediate family of the person defined by (a), (b) or (c).

2) The remainder of the voting members of the Board shall consist of one member representing the commercial health insurance industry in Illinois, one member representing the hospital services corporations in Illinois, one member who is actively engaged in the field of hospital management, one member who is a professional nurse registered in Illinois, one member who is a physician in active practice licensed in Illinois to practice medicine in all of its branches, and one member who is actively engaged in the field of skilled nursing or intermediate care facility management.

(Source: Amended at 24 Ill. Reg. 5671-3, effective March 14, 2000)

## Section 1925.220 Appointment and Terms of Office

a) Appointment: Members shall be appointed and confirmed in the manner provided in the Act, and shall serve for such terms as provided therein.

- 1) Terms
  - 1) The governor shall designate the date of expiration of the term of each member. A member shall continue to serve following the expiration of the term of office until he or she has been reappointed and qualified or a successor has been appointed and qualified.
- 2) No member shall serve more than 3 consecutive 3-year terms except for those members who are ex-officio non-voting members.

(Source: Amended at 24 Ill. Reg. 5671-3, effective March 14, 2000)

## Section 1925.230 Officers and Committees

## a) Officers

- 1) The State Board shall select a Chairman and Vice Chairman and such other officers at the first meeting of the calendar year and whenever there is a vacancy in any elected position.
- 2) The term of office shall be one year from the date of election until the date of the first meeting of the next calendar year session. The incumbent officers shall serve until the State Board has acted on the selection of officers for the ensuing

## HEALTH FACILITIES PLANNING BOARD

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year.

- b) Committees: The Chairman, acting for the State Board, will establish such standing and/or special committees as are deemed necessary. The Chairman shall specify the duties of committees and appoint the members.

(Source: Amended at 24 Ill. Reg. 5671, effective March 14, 2000)

## Section 1925.240 Executive Secretary

- a) The Executive Secretary of the State Board shall be named by the Director of the Department of Public Health (State Agency), with concurrence of the State Board. The Executive Secretary shall be a person qualified in health care facility planning and in administration.

- b) The Executive Secretary shall be the chief executive officer of the State Board, responsible to the Chairman and, through the Chairman, responsible to the State Board for the execution of its policies and procedures. The working title of this position and office shall be Executive Secretary, Office of the Illinois Health Facilities Planning Board.

- c) The Executive Secretary shall be employed and paid by the State Agency in accordance with the provisions of the Illinois Personnel Personnel Code, and be responsible to carry out the duties assigned to the State Agency by the Act.

- d) The Executive Secretary shall, on behalf of the State Board, have responsibility and commensurate authority to perform duties, including but not limited to, the following:

- 1) provide staff and administrative services for the State Board; report periodically to the State Board on staffing, budgetary, and administrative resources and needs.
- 2) recommend to the State Board its policies and procedures for implementing the provisions and purposes of the Illinois Health Facilities Planning Act.
- 3) execute and administer the program in accordance with State Board policies, procedures and directives.
- 4) plan, with the Chairman, all meetings of the State Board and prepare the tentative agenda for State Board approval.
- 5) maintain all records, files, and reports required by the State Board.

- 6) as the agent of the State Board, and in the manner it prescribes, prepare all contracts and agreements to which the State Board is a party. The Chairman of the State Board shall concur with the Director of the Department of Public Health all contracts and agreements.
- 7) represent the State Board whenever necessary; write and issue

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letters and other communications on its behalf.

- 8) perform other duties as directed by the State Board, or by its Chairman.

(Source: Amended at 24 Ill. Reg. 5671, effective March 14, 2000)

## Section 1925.250 Description and Chart of State Board Organization (Repealed)

~~Description:--The State Board is organized as heretofore set forth in--Appendix A--Chart of Organization of the State Board.~~

(Source: Repealed at 24 Ill. Reg. 5671, effective March 14, 2000)

## Section 1925.260 Meetings

- a) As provided in The Open Meetings Act "An Act in relation to meetings" [5 ILCS 120/2] (1993 Rev. Stat., ch. 102, Sec. 41-44) all decisions of the State Board shall be made at meetings open to the public.

- b) The State Board shall keep a complete and accurate record of all meetings including the votes of individual members on all matters before it.

- c) Regular and special meetings shall be called by the Chairman through the Executive Secretary.

- d) The State Board shall meet at least once each quarter, or as often as the Chairman of the State Board deems necessary, or upon the request of the majority of the members.

- e) The State Board shall, in the scheduling and conduct of its meetings, comply with the provisions of the Open Meetings Act "An Act in relation to meetings" [5 ILCS 120/2] (1993 Rev. Stat., ch. 102, Sec. 41-44) as heretofore or hereafter amended, specifically that the State Board shall adopt prior to the beginning of each fiscal year a schedule of meetings which shall state the regular dates, times, and places of such meetings.

- f) Public notice of regular meetings shall be given by posting a copy of the notice at the office headquarters of the State Board and supplying notice to media requesting such information pursuant to under the Open Meetings Act.

- g) The State Board, "An Act in relation to meetings" through its Executive Secretary, shall at the beginning of each fiscal year, prepare and make available a schedule of all its regular meetings for such fiscal year, listing the times and places of such meetings. If a change is made in regular meeting dates, at least 10 days notice of such change shall be given by publication in a newspaper of general circulation, with notice of such change posted at the principal office, and supplied to those media that have requested annual

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information.

- h) Special meetings may be called by the Chairman or a majority of State Board members upon at least 24 hours written notice to each member. Public notice of all special meetings, rescheduled regular meetings, or reconvened meetings shall be given at least 24 hours before such meetings, except that public notice of reconvened meetings does not apply to any case where the meeting is to be reconvened within 24 hours, nor to any case where announcement of the time and place of the reconvened meeting was made at the original meeting, and there is no change in the agenda.

(Source: Amended at 24 Ill. Reg. 567.1 effective March 14, 2000)

## Section 1925.270 Quorum

The quorum requirements are as specified in the Act. ~~Seven voting members of the State Board shall constitute a quorum. The affirmative vote of seven of the voting members of the State Board shall be necessary for any action requiring a vote to be taken by the State Board.~~ in the case of approval for an application for permit, a renewal thereof or a certificate of recognition, failure to secure seven affirmative votes shall constitute a denial or an intent to deny the case may be. A vacancy in the membership of the State Board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the State Board as provided for in the Act.

(Source: Amended at 24 Ill. Reg. 567.1 effective March 14, 2000)

## SUBPART C: ORGANIZATION

## Section 1925.280 Matters Requiring Items-Warranting State Board Action

- a) Matters on which the State Board shall deliberate and vote shall include, but not be limited to, the following:
  - 1) Adoption of the State Board's own organization and procedures including election of officers;
  - 2) Promulgation of setting rules, regulations, standards, criteria, or plans implementing the provisions and purposes of the Act;
  - 3) Adoption of procedures for public notice and hearing on all proposed rules, regulations, standards, criteria, and plans required to carry out the provisions of the Act;
  - 4) Adopting criteria for recognition of areawide health planning organizations;
  - 5) Approval of certificates of recognition for areawide health planning organizations;
  - 6) Approval and authorization of the issuance of a permit for construction or modification of a health facility;

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- 7) Adoption of rules of procedure for administrative hearing review and appeal in case of denial of permit for construction or modification or for denial or revocation of certificate of recognition for areawide health planning organization;
- 8) Scheduling an administrative appeal-fast hearing within 30 days after being notified that a hearing is requested and appointing a hearing officer;
- 9) Make its final determination following an administrative appeal-fast hearing;
- 10) Issue subpoenas requiring the attendance and giving of testimony by witnesses and subpoenas duces tecum requiring the production of books, papers, records, or memoranda for an administrative appeal-fast hearing;
- 11) Decide whether to require that the costs of service of subpoenas or subpoenas duces tecum issued at the instance of any other party to such proceeding be borne by the party at whose instance the witness is summoned, and decide whether to require a deposit to cover the cost of such service and witness fees;
- 12) Apply to any Circuit Court of this State to compel attendance of witnesses, production of books, papers, records, or memoranda and the giving of testimony before it or its hearing officer;
- 13) May cause depositions of witnesses within the State to be taken in the manner prescribed by law for like depositions in civil actions in Courts of this State, and to that end complete the attendance of witnesses and the production of books, papers, or memoranda;
- 14) Order investigations to be made by the Agency in connection with an application for permit, or application for a certificate of recognition;
- b) This Section shall not contradict the State Board's statutory authority that, if whenever the State Board renders a decision on an application which is contrary to the finding of the areawide health planning organization that organization (and the applicant) shall be provided within 10 working days a written detailed statement of the reasons for the inconsistency and that organization shall be afforded an opportunity for a hearing before a hearing officer who is appointed by the State Board (such hearing shall be conducted in accordance with the provisions specified in Section 10 of the Act); it should be noted that approval of an application and issuance of a permit in this instance is subject to the rights of the areawide health planning organization to appeal the decision and if before the State Board renders any negative decision relative to an application for a permit, a renewal thereof, or an application for a certificate of recognition or a revocation thereof, it shall notify the applicant or the holder of a permit or certificate in writing and permit him and such other parties as the State Board permits to appear before the State Board

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and present such information as may be relevant to the approval of a permit or certificate or renewal thereof or in resistance of the denial, revocation or modification of a permit or certificate.

(Source: Amended at 24 Ill. Reg. 567.1, effective March 14, 2000)

**Section 1925.285 Conflict of Interest**

The State Board recognizes that a particular situation may present a conflict of interest as between any members' private interests and his or her service on the State Board. Such situations may arise where an application for a permit or exemption of ~~a particular health care facility~~ or an application for a certificate of recognition of an areawide health planning agency is filed by individuals, organizations or agencies with whom the member is closely associated or has a direct business relationship. In such instances the member shall declare the situation and refrain from voting on any matter relating to the particular situation. Membership in a provider association or service on its committees shall not be deemed a conflict of interest.

(Source: Amended at 24 Ill. Reg. 567.1, effective March 14, 2000)

**Section 1925.290 Renumeration and Reimbursement**

State Board members, while serving on business of the State Board, shall receive compensation as provided in the Act (20 ILCS 3960/4). Additionally, State Board members shall receive actual and necessary travel and subsistence expenses while serving away from their places of residence (as specified in subsection (e) of this Section). Serving on business of the State Board includes, but shall not be limited to, the following: Attendance at regular, special, or committee meetings of the State Board; one day's compensation for review of materials in preparation for each regular meeting that is attended by a State Board member; and participation in task forces, investigations, hearings, judicial and legislative proceedings. ~~In addition, white-serving on business of the State Board which is authorized by the Chairman, each member shall receive compensation of \$150 per day.~~

- a) Eligibility:
  - 1) Voting members of the State Board shall be reimbursed through the State Agency for travel and subsistence expenses incurred in the performance of their duties as provided by law and/or by this Part.
  - 2) Ex-officio members of the State Board shall request reimbursement for travel and subsistence expenses from their respective departments as being a form of their official duties.
- b) Official Headquarters of Voting Members:
 

For the purpose of calculating travel and subsistence expenses of voting members of the State Board, the official headquarters of each

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members shall be their respective residences. Members are not entitled to reimbursement of living expenses while at their official headquarters.

## c) Official Travel Regulations:

Under ruling of the Attorney General, State of Illinois, dated April 21, 1972 (File No. S-446), members of the State Board shall be subject to the restrictions of the Travel Regulations, State of Illinois, ~~as amended~~, published by the Department of Central Management Services ~~Finance~~ and approved and promulgated by the Travel Control Board.

## d) Reimbursement Procedures:

All claims for reimbursement of travel and subsistence expenses shall be submitted on forms provided for the purpose. Submissions of such forms may be made subsequent to each meeting of the State Board, or may be held for submission at the conclusion of each month's individual activity. The Executive Secretary shall be the recipient of such vouchers for administrative processing and approval.

## e) Definition of Official Business Requiring Travel:

For the purpose of travel expense reimbursement, expenses incurred by the State Board members participating singly, or as a unit of the whole, or as the entire ~~a~~-total State Board, shall be considered to be official business of the State and of the State Board when such expenses are incurred as a participant in the following activities:

- 1) Regular, and special, and committee State Board meetings called by the Chairman through the Executive Secretary.
- 2) Participation in investigations, ~~investigations~~, hearings, judicial and legislative proceedings, or the like, in connection with a permit or matters arising from the administration of the Act ~~an application for a certificate of recognition~~.
- 3) Participation in public hearings relative to State Board Rules and/or health facilities standards, criteria, or plans.
- 4) Participation in Task Forces, Ad Hoc Committees, and other special units prescribed by the Chairman of the State Board.
- 5) Speaking before interested groups and organizations at meetings with interested persons and government officials, as a representative of the State Board, for the purpose of describing the activities of the State Board, its procedures, and the laws governing its purpose, organization and operation, and discussing issues related to health facilities planning.
- 6) Attendance, as a representative of the State Board, at meetings conducted by agencies of the State and Federal governments, and by National, State and local organizations having a direct interest in health facilities planning, except that attendance at meetings held outside the State shall have the prior approval of the Chairman of the Board, the Executive Secretary, and the Department of Central Management Services ~~Finance~~.

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 24 Ill. Reg. 56 7 1 - 3, effective March 14, 2000)

## Section 1925.295 Official Headquarters

The Official Headquarters of the State Board shall be 525-535 West Jefferson, 2nd Floor, Springfield, Illinois 62761.

(Source: Amended at 24 Ill. Reg. 56 7 1 - 3, effective March 14, 2000)

## Section 1925.297 Records and Reports

- a) The Executive Secretary shall be responsible for all records, reports and files of the State Board and shall keep same at the official headquarters or at other designated locations when directed by the State Board.
- b) The Executive Secretary shall, on behalf of the State Board, make available for public inspection all rules adopted by the State Board in the discharge of its functions and all final orders, decisions and opinions of the State Board, except any such as are deemed confidential by State or Federal statute; and shall maintain files available to the public containing all information declared public in Health Facilities Planning Act, this Act or in the Open Meetings Act "An Act in relation to meetings" [5 ILCS 120/2] 4 (111--Rev--Stat-1989; ch-1027-Sec-41-44) or in the Illinois Administrative Procedure Act [5 ILCS 100] Chapter-187.
- c) All files created or received in the execution of the responsibilities under the Act shall be open to reasonable public inspection and copying at the offices of the State Board, State Agency, or recognized statewide health planning organizations.
- d) the Executive Secretary shall, upon request, provide information regarding the status of the State Agency's review of an application for permit, including findings made in the course of the review and other appropriate information.
- e) The State Board in conjunction with the Agency shall annually prepare and publish a report outlining all reviews currently in the process of being conducted (including a statement concerning the status of each review) and of all reviews completed since the publication of the last report (including a general statement of the findings and decisions made in the course of each such review).

(Source: Amended at 24 Ill. Reg. 56 7 1 - 3, effective March 14, 2000)

## Section 1925.298 Amendment

This Part may be amended at any time by the State Board as stipulated in the Act [20 ILCS 3960/12] by the affirmative vote of 7 or more voting members of

## HEALTH FACILITIES PLANNING BOARD

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the State Board such amendment to be effectuated as provided by law.

(Source: Amended at 24 Ill. Reg. 56 7 1 - 3, effective March 14, 2000)

HEALTH FACILITIES PLANNING BOARD

NOTICE OF ADOPTED AMENDMENTS

Section 1975.APPENDIX A Chart of Organization of the State Board (Repealed)

ILLINOIS DEPARTMENT OF PUBLIC HEALTH

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- - - - -  
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- - - - -

EXECUTIVE SECRETARY -

----- STAFF BOARD

- Chairman (Voting Member)
- Vice-Chairman (Voting Member)
- 11-Other Voting Members\*
- 3-Ex-Officio Members
- (Non-Voting Members)
- Director of IDPH
- Director of IDMH
- Director of IDPA
- - - - -
- - - - -

----- Standing Committees

- HSA Division
- Financial & Economic
- Feasibility
- Plan Development
- Service Areas
- Budget & Legislation
- TIE
- - - - -
- - - - -

Ad-Hoc Committees

\* The Illinois Health Facilities Planning Act (Ill. Rev. Stat., 1993, Ch. 111-1/2, Pars. 1151-61-59) requires that the 13 voting members of the State Board represent the following:

- Consumers ----- 9 Members
- Commercial Health Insurance ----- 1 Member
- Hospital Service Corp. ----- 1 Member
- Long-Term Care Management ----- 1 Member

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- Hospital Management ----- 1 Member
- Professional Nursing ----- 1 Member
- Physicians ----- 1 Member

(Source: Repealed at 24 Ill. Reg. 5671, effective March 14, 2000)



DEPARTMENT OF HUMAN SERVICES  
NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: General Assistance
- 2) Code Citation: 89 Ill. Adm. Code 114
- 3) Section Numbers: Adopted Action:  
114.1 Amendment
- 4) Statutory Authority: Implementing Article VI and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Art. VI and 12-13].
- 5) Effective Date of Amendments: March 20, 2000
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: November 29, 1999 (23 Ill. Reg. 13979)
- 10) Has JCAR Issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version: The following change was made in the text of the proposed amendments:  
1. In Section 114.1(a)(2), "parent(s)" was changed to "parent or parents".  
No other substantive changes have been made in the text of the proposed amendments.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this amendment replace an emergency amendment currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: This rulemaking clarifies that a child, who is ineligible for TANF due to the income or assets of his or her parent or parents with whom he or she lives, is ineligible to receive Family and Children Assistance as a child-only unit.

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- 16) Information and questions regarding these adopted amendments shall be directed to:  
Mrs. Susan Weir, Bureau Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East  
3rd Floor, Harris Bldg.  
Springfield, Illinois 62762  
Telephone number: (217) 785-9772

The full text of adopted amendments begin on the next page:

DEPARTMENT OF HUMAN SERVICES  
NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES  
SUBCHAPTER B: ASSISTANCE PROGRAMS  
PART 114  
GENERAL ASSISTANCE

114.110 Project Advance Cooperation Requirements of Adjudicated Fathers (Repealed)  
114.111 Project Advance Sanctions (Repealed)  
114.113 Project Advance Good Cause for Failure to Comply (Repealed)  
114.115 Individuals Exempt From Project Advance (Repealed)  
114.117 Project Advance Supportive Services (Repealed)

SUBPART D: EMPLOYMENT AND TRAINING REQUIREMENTS

Section  
114.120 Employment and Training Requirements  
114.121 Persons Required to Participate in Project Chance (Repealed)  
114.122 Advocacy Program for Persons Who Have Applied for Supplemental Security Income (SSI) Under Title XVI of the Social Security Act (Repealed)  
114.123 Persons in Need of Work Rehabilitative Services (WRS) to Become Employable (Repealed)  
114.124 Employment and Training Participation/Cooperation Requirements (Repealed)  
114.125 Employment and Training Program Orientation (Repealed)  
114.126 Employment and Training Program Full Assessment Process/Development of an Employment Plan (Repealed)  
114.127 Employment and Training Program Components (Repealed)  
114.128 Employment and Training Sanctions (Repealed)  
114.129 Good Cause For Failure to Cooperate With Work and Training Participation Requirements (Repealed)  
114.130 Employment and Training Supportive Services (Repealed)  
114.135 Conciliation and Fair Hearings (Repealed)  
114.140 Employment Child Care (Repealed)

SUBPART E: FINANCIAL FACTORS OF ELIGIBILITY

Section  
114.200 Unearned Income  
114.201 Budgeting Unearned Income of Applicants Receiving Income On Date of Application And/Or Date of Decision  
114.202 Initial Receipt of Unearned Income  
114.203 Termination of Unearned Income  
114.210 Exempt Unearned Income  
114.220 Education Benefits  
114.221 Unearned Income in-Kind  
114.222 Earned Income  
114.223 Lump-Sum Payments  
114.224 Protected Income  
114.225 Earned Income

DEPARTMENT OF HUMAN SERVICES  
NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES  
SUBCHAPTER B: ASSISTANCE PROGRAMS  
PART 114  
GENERAL ASSISTANCE

114.1 Description of the Assistance Program  
114.2 Determination of Not Employable  
114.3 Advocacy Program for Persons Receiving State Transitional Assistance  
114.5 Incorporation By Reference

SUBPART A: GENERAL PROVISIONS

Section  
114.9 Client Cooperation  
114.10 Citizenship  
114.20 Residence  
114.30 Age  
114.40 Relationship  
114.50 Living Arrangement  
114.52 Social Security Numbers  
114.60 Work Registration Requirements (Outside City of Chicago only)  
114.61 Individuals Exempt From Work Registration Requirements (Outside City of Chicago only)  
114.62 Job Service Registration (Outside City of Chicago only)  
114.63 Failure to Maintain Current Job Service Registration (Outside City of Chicago only)  
114.64 Responsibility to Seek Employment (Outside City of Chicago only)  
114.70 Initial Employment Expenses (Outside City of Chicago only)  
114.80 Downstate General Assistance Work and Training Programs  
114.85 Downstate General Assistance - Food Stamps Employment and Training Pilot Project  
114.90 Project Chance Participation/Cooperation Requirements (Renumbered)  
114.100 General Assistance Jobs Program (Repealed)  
114.101 Persons Ineligible for TANF Due to Time Limits

SUBPART C: PROJECT ADVANCE

Section  
114.108 Project Advance (Repealed)  
114.109 Project Advance Participation Requirements of Adjudicated Fathers (Repealed)

DEPARTMENT OF HUMAN SERVICES  
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114.226 Budgeting Earned Income  
114.227 Application And/Or Date of Decision  
114.228 Initial Employment  
114.229 Termination of Employment  
114.230 Exempt Earned Income  
114.235 Recognized Employment Expenses  
114.240 Income From Work/Study/Training Program (Repealed)  
114.241 Earned Income From Self-Employment  
114.242 Earned Income From Roomer and Boarder  
114.243 Earned Income From Rental Property  
114.244 Earned Income In-Kind  
114.245 Payments from the Illinois Department of Children and Family Services  
114.246 Budgeting Earned Income For Contractual Employees  
114.247 Budgeting Earned Income For Non-contractual School Employees  
114.250 Assets  
114.251 Exempt Assets  
114.252 Asset Disregards  
114.260 Deferral of Consideration of Assets (Repealed)  
114.270 Property Transfers (Repealed)  
114.280 Supplemental Payments

SUBPART F: PAYMENT AMOUNTS

Section  
114.350 Payment Levels  
114.351 Payment Levels in Group I Counties  
114.352 Payment Levels in Group II Counties  
114.353 Payment Levels in Group III Counties

SUBPART G: OTHER PROVISIONS

Section  
114.400 Persons Who May Be Included in the Assistance Unit  
114.401 Eligibility of Strikers  
114.402 Special Needs Authorizations (Repealed)  
114.403 Institutional Status  
114.404 Retrospective Budgeting  
114.405 Budgeting Schedule  
114.406 Limitation on Amount of General Assistance to Recipients from Other States (Repealed)  
114.408 Responsibility of Sponsors of Non-Citizens Entering the Country On or after 8/22/96  
114.420 Redetermination of Eligibility  
114.430 Extension of Medical Assistance Due to Increased Income from Employment

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114.440 Attorney's Fees for VA Appellants  
114.442 Attorney's Fees for SSI Applicants  
SUBPART H: CHILD CARE  
Section  
114.450 Child Care (Repealed)  
114.451 Child Care Eligibility (Repealed)  
114.452 Qualified Provider (Repealed)  
114.454 Notification of Available Services (Repealed)  
114.456 Participant Rights and Responsibilities (Repealed)  
114.458 Additional Service to Secure or Maintain Child Care Arrangements (Repealed)  
114.464 Rates of Payment for Child Care (Repealed)  
114.466 Method of Providing Child Care (Repealed)

SUBPART I: TRANSITIONAL CHILD CARE

Section  
114.500 Transitional Child Care Eligibility (Repealed)  
114.504 Duration of Eligibility for Transitional Child Care (Repealed)  
114.506 Loss of Eligibility for Transitional Child Care (Repealed)  
114.508 Qualified Provider (Repealed)  
114.510 Notification of Available Services (Repealed)  
114.512 Participant Rights and Responsibilities (Repealed)  
114.514 Child Care Overpayments and Recoveries (Repealed)  
114.516 Fees for Service for Transitional Child Care (Repealed)  
114.518 Rates of Payment for Transitional Child Care (Repealed)

AUTHORITY: Implementing Article VI and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Art. VI and 12-13].

SOURCE: Filed effective December 30, 1977; peremptory amendment at 2 Ill. Reg. 17, p. 117, effective February 1, 1978; amended at 2 Ill. Reg. 31, p. 134, effective August 5, 1978; emergency amendment at 2 Ill. Reg. 37, p. 4, effective August 30, 1978, for a maximum of 150 days; peremptory amendment at 2 Ill. Reg. 46, p. 44, effective November 1, 1978; peremptory amendment at 2 Ill. Reg. 46, p. 56, effective November 1, 1978; emergency amendment at 3 Ill. Reg. 16, p. 41, effective April 9, 1979, for a maximum of 150 days; emergency amendment at 3 Ill. Reg. 28, p. 182, effective July 1, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amendment at 3 Ill. Reg. 33, p. 415, effective August 18, 1979; amended at 3 Ill. Reg. 38, p. 243, effective September 21, 1979; peremptory amendment at 3 Ill. Reg. 38, p. 321, effective September 7, 1979; amended at 3 Ill. Reg. 40, p. 140, effective October 6, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13,

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July 16, 1984; amended at 8 Ill. Reg. 16237, effective August 24, 1984; amended (by adding Sections being codified with no substantive change) at 8 Ill. Reg. 17896; amended at 9 Ill. Reg. 314, effective January 1, 1985; emergency amendment at 9 Ill. Reg. 823, effective January 3, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 9557, effective June 5, 1985; amended at 9 Ill. Reg. 10764, effective July 5, 1985; amended at 9 Ill. Reg. 15800, effective October 16, 1985; amended at 10 Ill. Reg. 1924, effective January 17, 1986; amended at 10 Ill. Reg. 3660, effective January 30, 1986; emergency amendment at 10 Ill. Reg. 4646, effective February 3, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 4896, effective March 7, 1986; amended at 10 Ill. Reg. 10681, effective June 3, 1986; amended at 10 Ill. Reg. 11041, effective June 5, 1986; amended at 10 Ill. Reg. 12662, effective July 14, 1986; amended at 10 Ill. Reg. 15118, effective September 5, 1986; amended at 10 Ill. Reg. 15640, effective September 19, 1986; amended at 10 Ill. Reg. 19079, effective October 24, 1986; amended at 11 Ill. Reg. 2307, effective January 16, 1987; amended at 11 Ill. Reg. 3297, effective March 11, 1987; amended at 11 Ill. Reg. 6238, effective March 20, 1987; emergency amendment at 11 Ill. Reg. 12449, effective July 10, 1987, for a maximum of 150 days; emergency amendment at 11 Ill. Reg. 12948, effective August 1, 1987, for a maximum of 150 days; emergency amendment at 11 Ill. Reg. 18311, effective November 1, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 18689, effective November 1, 1987; emergency amendment at 11 Ill. Reg. 18791, effective November 1, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 20129, effective December 4, 1987; amended at 11 Ill. Reg. 20889, effective December 14, 1987; amended at 12 Ill. Reg. 889, effective January 1, 1988; SUBPARTS C, D and E reclassified to SUBPARTS E, F and G at 12 Ill. Reg. 2147; Section 114.110 reclassified to Section 114.52 at 12 Ill. Reg. 2984; amended at 12 Ill. Reg. 3505, effective January 22, 1988; amended at 12 Ill. Reg. 6170, effective March 18, 1988; amended at 12 Ill. Reg. 6719, effective March 22, 1988; amended at 12 Ill. Reg. 9108, effective May 24, 1988; amended at 12 Ill. Reg. 9699, effective May 31, 1988; amended at 12 Ill. Reg. 11474, effective June 30, 1988; amended at 12 Ill. Reg. 14364, effective September 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 16729, effective September 30, 1988; amended at 12 Ill. Reg. 20171, effective November 28, 1988; amended at 13 Ill. Reg. 89, effective January 1, 1989; amended at 13 Ill. Reg. 3900, effective March 10, 1989; amended at 13 Ill. Reg. 8580, effective May 20, 1989; emergency amendment at 13 Ill. Reg. 16169, effective October 2, 1989, for a maximum of 150 days; emergency expired March 1, 1990; amended at 13 Ill. Reg. 16015, effective October 6, 1989; amended at 14 Ill. Reg. 746, effective January 1, 1990; amended at 14 Ill. Reg. 3640, effective February 23, 1990; amended at 14 Ill. Reg. 6360, effective April 16, 1990; amended at 14 Ill. Reg. 10328, effective June 20, 1990; amended at 14 Ill. Reg. 13215, effective August 6, 1990; amended at 14 Ill. Reg. 13777, effective August 10, 1990; amended at 14 Ill. Reg. 14162, effective August 17, 1990; amended at 14 Ill. Reg. 17111, effective

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1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; peremptory amendment at 4 Ill. Reg. 9, p. 259, effective February 22, 1980; amended at 4 Ill. Reg. 10, p. 258, effective February 25, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; amended at 4 Ill. Reg. 27, p. 387, effective June 24, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 37, p. 800, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 27, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1134, effective January 26, 1981; peremptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; amended at 5 Ill. Reg. 7104, effective June 23, 1981; amended at 5 Ill. Reg. 8041, effective July 27, 1981; amended at 5 Ill. Reg. 8052, effective July 24, 1981; peremptory amendment at 5 Ill. Reg. 8106, effective August 1, 1981; peremptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10079, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10095, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10113, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10124, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10131, effective October 1, 1981; amended at 5 Ill. Reg. 10730, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 10760, effective October 1, 1981; amended at 5 Ill. Reg. 10767, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 11647, effective October 16, 1981; peremptory amendment at 6 Ill. Reg. 611, effective January 1, 1982; amended at 6 Ill. Reg. 1216, effective January 14, 1982; emergency amendment at 6 Ill. Reg. 2447, effective March 1, 1982, for a maximum of 150 days; peremptory amendment at 6 Ill. Reg. 2452, effective February 11, 1982; peremptory amendment at 6 Ill. Reg. 6475, effective May 18, 1982; peremptory amendment at 6 Ill. Reg. 6912, effective May 20, 1982; emergency amendment at 6 Ill. Reg. 7299, effective June 2, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8115, effective July 1, 1982; amended at 6 Ill. Reg. 8142, effective July 1, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10970, effective August 26, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12293, effective October 1, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; rules repealed, new rules adopted and codified at 7 Ill. Reg. 907, effective January 7, 1983; amended (by adding Sections being codified with no substantive change) at 7 Ill. Reg. 5195; amended at 7 Ill. Reg. 9009, effective August 5, 1983; amended (by adding Section being codified with no substantive change) at 7 Ill. Reg. 14747; amended (by adding Section being codified with no substantive change) at 7 Ill. Reg. 16107; amended at 7 Ill. Reg. 16408, effective November 30, 1983; amended at 7 Ill. Reg. 16652, effective December 1, 1983; amended at 8 Ill. Reg. 243, effective December 27, 1983; amended at 8 Ill. Reg. 5233, effective April 9, 1984; amended at 8 Ill. Reg. 6764, effective April 27, 1984; amended at 8 Ill. Reg. 11435, effective June 27, 1984; amended at 8 Ill. Reg. 13319, effective



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September 30, 1990; amended at 15 Ill. Reg. 286, effective January 1, 1991; amended at 15 Ill. Reg. 5710, effective April 10, 1991; amended at 15 Ill. Reg. 11164, effective August 1, 1991; emergency amendment at 15 Ill. Reg. 15144, effective October 7, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 3512, effective February 20, 1992; emergency amendment at 16 Ill. Reg. 4540, effective March 10, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 11662, effective July 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 13297, effective August 15, 1992; emergency amendment at 16 Ill. Reg. 13651, effective September 1, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14769, effective September 15, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 16276, effective October 1, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 17772, effective November 13, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 18815, effective November 24, 1992; amended at 17 Ill. Reg. 1091, effective January 15, 1993; amended at 17 Ill. Reg. 2777, effective February 15, 1993; amended at 17 Ill. Reg. 3255, effective March 1, 1993; amended at 17 Ill. Reg. 3639, effective February 26, 1993; amended at 17 Ill. Reg. 3255, effective March 1, 1993; amended at 17 Ill. Reg. 6814, effective April 21, 1993; emergency amendment at 17 Ill. Reg. 19728, effective November 1, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 3436, effective February 28, 1994; amended at 18 Ill. Reg. 7390, effective April 29, 1994; amended at 18 Ill. Reg. 12839, effective August 5, 1994; emergency amendment at 19 Ill. Reg. 8434, effective June 9, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15058, effective October 17, 1995; emergency amendment at 20 Ill. Reg. 4445, effective February 28, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 9970, effective July 10, 1996; emergency amendment at 21 Ill. Reg. 682, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 7413, effective May 31, 1997; emergency amendment at 21 Ill. Reg. 8652, effective July 1, 1997, for a maximum of 150 days; reclassified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; amended at 21 Ill. Reg. 15545, effective November 26, 1997; emergency amendment at 22 Ill. Reg. 16356, effective September 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 19820, effective November 1, 1998; emergency amendment at 23 Ill. Reg. 588, effective January 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 1619, effective January 20, 1999; amended at 23 Ill. Reg. 6067, effective May 4, 1999; amended at 23 Ill. Reg. 6434, effective May 15, 1999; amended at 23 Ill. Reg. 6948, effective May 30, 1999; emergency amendment at 23 Ill. Reg. 8661, effective July 13, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13863, effective November 19, 1999; amended at 24 Ill. Reg. 2338, effective February 1, 2000; amended at 24 Ill. Reg. **5688** -- effective MAR 21 2000.

## SUBPART A: GENERAL PROVISIONS

## Section 114.1 Description of the Assistance Program

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- a) The General Assistance program provides--financial and medical assistance to eligible needy families or individuals who are ineligible to receive assistance through a categorical or Federal Assistance Program.
- 1) Individuals who do not qualify for TANF solely because of refusal or failure to cooperate with Targeted Work Initiative requirements do not qualify for General Assistance.
- 2) An 18 year old child, who is ineligible for TANF due to the income or assets of his or her parent or parents who are living in the same household, is ineligible to receive Family and Children Assistance as a child only unit.
- b) General Assistance is provided to eligible families and to pregnant women, as defined in Section 114.400, through the Family and Children Assistance program. Assistance is provided without regard to any limitation on the number of months an eligible family or pregnant woman may receive such benefits.
- c) For Fiscal Year 1992 (July 1, 1991 through June 30, 1992), General Assistance is provided to individual adults, as defined in Section 114.400, through the Transitional Assistance program, with the following limitations:
- 1) Individuals receiving Transitional Assistance may only receive such assistance for nine calendar months. Receipt of General Assistance or Transitional Assistance for any month in Fiscal Year 1992 (July 1991 through June 1992), shall count towards this limitation.
- 2) Transitional Assistance shall not be continued pending a final decision in an appeal past the nine month limitation in subsection (c)(1) above, under any circumstances, unless the client has appealed a determination of employability on a timely basis and the hearing is pending on the date the nine month limitation would become effective for that client.
- 3) Notwithstanding subsection (c)(1) above, eligible individuals may qualify for Transitional Assistance without regard to any limitations on the number of months of eligibility during any time period if the individual is determined to be not employable pursuant to Section 114.2.
- d) Effective July 1, 1995, General Assistance is provided to individual adults, as defined in Section 114.400, through the Transitional Assistance program only for those individuals determined to be not employable pursuant to Section 114.2.
- e) Individuals determined to be not employable under Section 114.2(b)(1) whose disability is based solely on substance additions (drug abuse and alcoholism) and whose disability would cease were their additions to end shall not be eligible for cash benefits, but shall only be eligible for medical assistance.
- f) Individuals determined to be not employable under Section 114.2(b)(1)

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shall be entitled to medical services under 89 Ill. Adm. Code 140.3.  
All other general assistance recipients shall be entitled to medical  
services under 89 Ill. Adm. Code 140.5.

(Source: Amended at 24 Ill. Reg. 5688, effective  
Mar 20 2000)

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- 1) Heading of the Part: Meat and Poultry Inspection Act
- 2) Code Citation: 8 Ill. Adm. Code 125
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
125.30	Amended
125.144	Amended
125.380	Amended
125.390	Amended
- 4) Reference to the Specific State or Federal Court Order, Federal Rule of Statute Which Requires this Peremptory Rulemaking: The Meat and Poultry Inspection Act [225 ILCS 650]; the Federal Meat Inspection Act (21 USCA 661); the Federal Poultry Products Inspection Act (21 USCA 454); 64 FR 72150 and 65 FR 2284.

- 5) Statutory Authority: The Meat and Poultry Inspection Act [225 ILCS 650].
- 6) Effective Date: March 14, 2000
- 7) A Complete Description of the Subjects and Issues Involved: In order to maintain an "equal to" status with the federal meat and poultry products inspection program as required by the Federal Meat Inspection Act and the Poultry Products Inspection Act, and in accordance with Section 16 of the Meat and Poultry Inspection Act, the Department is adopting amendments to the federal poultry products inspection rules.

The Food Safety and Inspection Service (FSIS) is amending its regulations to permit the use of ionizing radiation for treating refrigerated or frozen, uncooked meat, meat byproducts and certain other meat food products to reduce levels of foodborne pathogens and to extend shelf-life. FSIS is also revising the regulations governing the irradiation of poultry products so that they will be as consistent as possible with the regulations for the irradiation of meat food products. These amendments appear at 64 FR 72150 (effective February 22, 2000 and published in the December 23, 1999 Federal Register). A technical correction to this rule was published at 65 FR 2284 (effective February 22, 2000 and published in the January 14, 2000 Federal Register).

- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Date Filed with the Index Department: March 14, 2000
- 10) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

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11) This rule is in compliance with Section 5-50 of the Illinois Administrative Procedure Act.

12) Are there any proposed amendments pending to this Part? Yes

Section Numbers

Proposed Action

125.380

Amendment

Illinois Register Citation

24 Ill. Reg. 1746

13) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.

14) Information and questions regarding this adopted amendment shall be directed to:

Name: Linda Rhodes

Address: Illinois Department of Agriculture

State Fairgrounds

P.O. Box 19281

Springfield, Illinois 62794-9281

Telephone: 217/785-5713

Facsimile: 217/785-4505

The full text of the Peremptory Amendment begins on the next page:

DEPARTMENT OF AGRICULTURE

NOTICE OF PEREMPTORY AMENDMENTS

TITLE 8: AGRICULTURE AND ANIMALS  
CHAPTER 1: DEPARTMENT OF AGRICULTURE  
SUBCHAPTER C: MEAT AND POULTRY INSPECTION ACT

PART 125

MEAT AND POULTRY INSPECTION ACT

SUBPART A: GENERAL PROVISIONS FOR BOTH MEAT AND/OR  
POULTRY INSPECTION

Section	Definitions
125.10	Incorporation by Reference of Federal Rules
125.20	Application for License; Approval
125.30	Official Number
125.40	Inspections; Suspension or Revocation of License
125.50	Administrative Hearings; Appeals (Repealed)
125.60	Assignment and Authority of Program Employees
125.70	Schedule of Operations; Overtime
125.80	Official Marks of Inspection, Devices and Certificates
125.90	Records and Reports
125.100	Exemptions
125.110	Disposal of Dead Animals and Poultry
125.120	Reportable Animal and Poultry Diseases
125.130	Detention; Seizure; Condemnation
125.140	Sanitation Standard Operating Procedures (SOP's)
125.141	Hazard Analysis and Critical Control Point (HACCP) Systems
125.142	Imported Products
125.143	Preparation and Processing Operations
125.144	

SUBPART B: MEAT INSPECTION

Section	Livestock and Meat Products Entering Official Establishments
125.150	Equine and Equine Products
125.160	Facilities for Inspection
125.170	Sanitation
125.180	Ante-Mortem Inspection
125.190	Post-Mortem Inspection
125.200	Disposal of Diseased or Otherwise Adulterated Carcasses and Parts
125.210	Humane Slaughter of Animals
125.220	Handling and Disposal of Condemned or Other Inedible Products at Official Establishment
125.230	Rendering or Other Disposal of Carcasses and Parts Passed for Cooking
125.240	Marking Products and Their Containers
125.250	Labeling, Marking and Containers
125.260	

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125-270 Entry into Official Establishment; Reinspection and Preparation of Product  
 125-280 Meat Definitions and Standards of Identity or Composition  
 125-290 Transportation  
 125-295 Imported Products (Repealed)  
 125-300 Special Services Relating to Meat and Other Products  
 125-305 Exotic Animal Inspection

## SUBPART C: POULTRY INSPECTION

Section  
 125-310 Application of Inspection  
 125-320 Facilities for Inspection  
 125-330 Sanitation  
 125-340 Operating Procedures  
 125-350 Ante-Mortem Inspection  
 125-360 Post-Mortem Inspection; Disposition of Carcasses and Parts  
 125-370 Handling and Disposal of Condemed or Inedible Products at Official Establishments  
 125-380 Labeling and Containers  
 125-390 Entry of Articles Into Official Establishments; Processing Inspection and Other Reinspections; Processing Requirements  
 125-400 Definitions and Standards of Identity or Composition  
 125-410 Transportation; Sale of Poultry or Poultry Products

**AUTHORITY:** Implementing and authorized by the Meat and Poultry Inspection Act [225 ILCS 650] and Section 16 of the Civil Administrative Code of Illinois [20 ILCS 5/16].

**SOURCE:** Adopted at 9 Ill. Reg. 1782, effective January 24, 1985; peremptory amendment at 9 Ill. Reg. 2337, effective January 28, 1985; peremptory amendment at 9 Ill. Reg. 2980, effective February 20, 1985; peremptory amendment at 9 Ill. Reg. 4856, effective April 1, 1985; peremptory amendment at 9 Ill. Reg. 9240, effective June 5, 1985; peremptory amendment at 9 Ill. Reg. 10102, effective June 13, 1985; peremptory amendment at 9 Ill. Reg. 11673, effective July 17, 1985; peremptory amendment at 9 Ill. Reg. 13748, effective August 23, 1985; peremptory amendment at 9 Ill. Reg. 15575, effective October 2, 1985; peremptory amendment at 9 Ill. Reg. 19759, effective December 5, 1985; peremptory amendment at 10 Ill. Reg. 447, effective December 22, 1985; peremptory amendment at 10 Ill. Reg. 1307, effective January 7, 1986; peremptory amendment at 10 Ill. Reg. 3318, effective January 24, 1986; peremptory amendment at 10 Ill. Reg. 3880, effective February 7, 1986; peremptory amendment at 10 Ill. Reg. 14178, effective June 29, 1986; peremptory amendment at 10 Ill. Reg. 14858, effective August 22, 1986; peremptory amendment at 10 Ill. Reg. 15505, effective September 10, 1986; peremptory amendment at 10 Ill. Reg. 16743, effective September 19, 1986; peremptory

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amendment at 10 Ill. Reg. 18203, effective October 15, 1986; peremptory amendment at 10 Ill. Reg. 19818, effective November 12, 1986; peremptory amendment at 11 Ill. Reg. 1696, effective January 5, 1987; peremptory amendment at 11 Ill. Reg. 2930, effective January 23, 1987; peremptory amendment at 11 Ill. Reg. 3645, effective April 29, 1987; peremptory amendment at 11 Ill. Reg. 10321, effective May 15, 1987; peremptory amendment at 11 Ill. Reg. 11184, effective June 5, 1987; peremptory amendment at 11 Ill. Reg. 18430, effective August 25, 1987; peremptory amendment at 11 Ill. Reg. 18799, effective November 3, 1987; peremptory amendment at 11 Ill. Reg. 19805, effective November 19, 1987; peremptory amendment at 12 Ill. Reg. 2154, effective January 6, 1988; amended at 12 Ill. Reg. 3417, effective January 22, 1988; peremptory amendment at 12 Ill. Reg. 4879, effective February 25, 1988; peremptory amendment at 12 Ill. Reg. 6313, effective March 21, 1988; peremptory amendment at 12 Ill. Reg. 6819, effective March 29, 1988; peremptory amendment at 12 Ill. Reg. 13621, effective August 8, 1988; peremptory amendment at 12 Ill. Reg. 19116, effective November 1, 1988; peremptory amendment at 12 Ill. Reg. 20894, effective December 21, 1988; peremptory amendment at 13 Ill. Reg. 228, effective January 11, 1989; peremptory amendment at 13 Ill. Reg. 2160, effective February 13, 1989; amended at 13 Ill. Reg. 3696, effective March 13, 1989; peremptory amendment at 13 Ill. Reg. 15853, effective October 5, 1989; peremptory amendment at 13 Ill. Reg. 16838, effective October 19, 1989; peremptory amendment at 13 Ill. Reg. 17495, effective January 18, 1990; amended at 14 Ill. Reg. 3424, effective February 26, 1990; peremptory amendment at 14 Ill. Reg. 4953, effective March 23, 1990; peremptory amendment at 14 Ill. Reg. 11401, effective July 6, 1990; peremptory amendment at 14 Ill. Reg. 13355, effective August 20, 1990; peremptory amendment at 14 Ill. Reg. 16064, effective September 24, 1990; peremptory amendment at 15 Ill. Reg. 21060, effective May 29, 1991; peremptory amendment at 15 Ill. Reg. 620, effective January 2, 1991; peremptory amendment withdrawn at 15 Ill. Reg. 1574, effective January 2, 1991; peremptory amendment at 15 Ill. Reg. 3117, effective September 3, 1991; peremptory amendment at 15 Ill. Reg. 8714, effective May 29, 1991; amended at 15 Ill. Reg. 8801, effective June 7, 1991; peremptory amendment at 15 Ill. Reg. 13976, effective September 20, 1991; peremptory amendment at 16 Ill. Reg. 1899, effective March 2, 1992; amended at 16 Ill. Reg. 8349, effective May 26, 1992; peremptory amendment at 16 Ill. Reg. 11687, effective July 10, 1992; peremptory amendment at 16 Ill. Reg. 11963, effective July 24, 1992; peremptory amendment at 16 Ill. Reg. 12234, effective July 24, 1992; peremptory amendment at 16 Ill. Reg. 16337, effective October 19, 1992; peremptory amendment at 16 Ill. Reg. 17165, effective October 21, 1992; peremptory amendment at 17 Ill. Reg. 2063, effective February 12, 1993; peremptory amendment at 17 Ill. Reg. 15728, effective September 7, 1993; peremptory amendment at 17 Ill. Reg. 16238, effective September 8, 1993; peremptory amendment at 17 Ill. Reg. 18215, effective October 5, 1993; peremptory amendment at 18 Ill. Reg. 304, effective December 23, 1993; peremptory amendment at 18 Ill. Reg. 2164, effective January 24, 1994; amended at 18 Ill. Reg. 4622, effective March 14, 1994; peremptory amendment at 18 Ill. Reg. 6444, effective April 18, 1994; peremptory amendment



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at 18 Ill. Reg. 8493, effective May 27, 1994; amended at 18 Ill. Reg. 11489, effective July 7, 1994; peremptory amendment at 18 Ill. Reg. 12546, effective July 29, 1994; peremptory amendment at 18 Ill. Reg. 14475, effective September 7, 1994; amended at 18 Ill. Reg. 14924, effective September 26, 1994; peremptory amendment at 18 Ill. Reg. 15452, effective September 27, 1994; peremptory amendment at 19 Ill. Reg. 1342, effective January 27, 1995; peremptory amendment at 19 Ill. Reg. 4765, effective March 13, 1995; peremptory amendment at 19 Ill. Reg. 7067, effective May 8, 1995; peremptory amendment at 19 Ill. Reg. 14896, effective October 6, 1995; peremptory amendment at 19 Ill. Reg. 15766, effective November 10, 1995; peremptory amendment at 20 Ill. Reg. 5091, effective December 22, 1995; peremptory amendment at 20 Ill. Reg. 5091, effective March 19, 1996; peremptory amendment at 20 Ill. Reg. 10403, effective July 17, 1996; amended at 20 Ill. Reg. 11928, effective September 5, 1996; peremptory amendment at 20 Ill. Reg. 12634, effective September 5, 1996; peremptory amendment at 21 Ill. Reg. 15371, effective November 13, 1996; peremptory amendment at 21 Ill. Reg. 1211, effective January 14, 1997; peremptory amendment at 21 Ill. Reg. 1719, effective January 26, 1997; peremptory amendment at 21 Ill. Reg. 6609, effective May 20, 1997; amended at 21 Ill. Reg. 11494, effective August 1, 1997; peremptory amendment at 21 Ill. Reg. 11788, effective August 8, 1997; peremptory amendment at 21 Ill. Reg. 14575, effective August 28, 1997; peremptory amendment at 21 Ill. Reg. 14575, effective October 22, 1997; peremptory amendment at 22 Ill. Reg. 3602, effective February 2, 1998; peremptory amendment at 22 Ill. Reg. 5740, effective March 5, 1998; peremptory amendment at 22 Ill. Reg. 9384, effective May 15, 1998; peremptory amendment at 22 Ill. Reg. 20645, effective November 16, 1998; amended at 23 Ill. Reg. 450, effective January 1, 1999; peremptory amendment at 23 Ill. Reg. 3851, effective March 11, 1999; peremptory amendment at 23 Ill. Reg. 10880, effective August 19, 1999; peremptory amendment at 24 Ill. Reg. 3933, effective February 22, 2000; peremptory amendment at 24 Ill. Reg. 5659, effective March 14, 2000.

## SUBPART A: GENERAL PROVISIONS FOR BOTH MEAT AND/OR

## POULTRY INSPECTION

## Section 125.30 Application for License; Approval

- a) An application for license to operate an establishment or act as a broker shall be made in accordance with Section 3 of the Act. A fee as set forth in Section 3(b) of the Act shall accompany the license application.
- b) When there is a change in the ownership of the brokerage business or of the establishment or of any tenant or subsidiary of the licensee, a new application for license shall be submitted by the person desiring to operate the establishment or act as a broker in accordance with subsection (a) of this Section. If there has been no change in the facilities of the establishment as shown on the drawings and

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- specifications required by subsection (c) of this Section and the licensee so states in writing to the Department, copies of drawings and specifications shall not be required to accompany the new application for license. When there is a change in the facilities or location of any official establishment or broker, a new application for license shall be submitted by the licensee in accordance with subsections (a) and (c) of this Section.
- c) In the case of establishments handling meat and meat products, the Department incorporates by reference 9 CFR 304.2(a)(1) and (2) and 304.3 (1997), and in case of establishments handling poultry and poultry products, the Department incorporates by reference 9 CFR 381.13(a)(2)-through-(5)-(7)-(8)-and-(9)-and 381.22 (1997), 64 CFR 72150, effective February 22, 2000). If the establishment handles both meat and/or poultry or meat and/or poultry products, the establishment shall comply with both of the before-stated provisions. Except that in any case, the Department requests 3 copies of said drawings and specifications to accompany the application for license. The specification requirements are as set forth in Sections 125.170 and 125.180.
- d) The applicant for license to operate an establishment or act as a broker shall submit the following information to the Department on the application form:
  - 1) Name and address and telephone number of the applicant.
  - 2) Type of operation(s) the applicant will be performing (i.e., slaughter, processing, custom slaughter, meat broker, poultry broker, or meat and poultry broker).
  - 3) The location of the establishment or brokerage business for which the license is requested.
  - 4) The name and address of any tenant or subsidiary of the applicant that will be preparing meat and/or poultry or meat and/or poultry products at the establishment (if applicable).
  - 5) Name of the establishment (trade name).
  - 6) Legal entity of the applicant (e.g., individual, association, corporation) and the legal name of the business.
  - 7) State where the corporation or association is incorporated and list of officers (if applicable).
- e) The applicant for license shall certify on the application for license that he/she shall comply with the Act and the rules of this Part. The applicant and any tenant or subsidiary of the applicant shall be responsible for compliance with the Act and rules of this Part.
- f) The slaughter or preparation of meat and/or poultry products at any official establishment shall be performed only by employees of the licensee or by employees of the tenant or subsidiary whose name was submitted to the Department on the license application.
- g) Before issuing a license to operate an establishment an inspection shall be made of the establishment to determine compliance with

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Sections 125.50, 125.170 and 125.180. All labels shall be approved in accordance with Sections 125.90 and 125.260 before any meat and/or poultry or meat and/or poultry product is transported in commerce. The Director shall issue a license to act as a broker or to operate an establishment if the applicant is not in violation of Section 19 of the Act and the establishment is in compliance with the rules of this part. If the applicant for license is denied, the procedure as set forth in Section 19(F) of the Act shall be followed.

- h) Only one license to operate an official establishment shall be issued by the Department for each facility. The slaughter of meat and/or poultry or the preparation of meat and/or poultry products by any tenant or subsidiary of the licensee who is listed on the application form shall be construed as part of the official establishment for inspection purposes.

(Source: Amended by peremptory rulemaking at 24 Ill. Reg. **5699**, effective March 14, 2000)

**Section 125.144 Preparation and Processing Operations**

The Department incorporates by reference 9 CFR 424 (1999; 64 FR 72168, effective January 24, 2000), 64 FR 72150, effective February 22, 2000).

(Source: Amended by peremptory rulemaking at 24 Ill. Reg. **5699**, effective March 14, 2000)

**SUBPART C: POULTRY INSPECTION****Section 125.380 Labeling and Containers**

- a) The Department incorporates by reference 381.115 through 381.127, 381.129 through 381.132(f), 381.134, 381.136 through 381.140, 381.144(a) through 381.144(d), 381.400, 381.402, 381.408, 381.409, 381.412, 381.413, 381.413, 381.444, 381.445, 381.454, 381.456, 381.460, 381.461, 381.462, 381.463, 381.469, 381.480, 381.500 (1997; 62 FR 45016, effective September 24, 1997; 63 FR 7279, effective February 13, 1998; 63 FR 11359, effective May 8, 1998; 64 FR 732, effective March 8, 1999; 64 FR 72168, effective January 24, 2000), 64 FR 72150, effective February 22, 2000).

- b) Each shipping container and each immediate container containing inspected and passed poultry and/or poultry products shall be identified in accordance with the labeling provisions of this Section.
- c) Immediate containers of poultry products packed in, bearing or containing any chemical additive shall bear a label naming the additive and the purpose of its use.
- d) Labels for consumer packages shall be approved if the label is not

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misbranded in accordance with Section 2.20 of the Act and is in compliance with this Section.

- e) The specific statements listed in 9 CFR 381.121 may be added to the label for the shipping container at the option of the licensee.
- f) The quantity of contents as shown on the label shall be in compliance with the Weights and Measures Act and the rules adopted thereto (8 Ill. Adm. Code 600).
- g) No labeling or containers that have not been approved shall be used until a final decision is rendered at an administrative hearing in accordance with Section 19 of the Act.
- h) The Department shall approve the manufacture of a device or label containing an official mark of inspection provided the device or label is in compliance with Section 125.90.
- i) Labeling and sketch labeling shall be approved by the Department if the label is in compliance with the provisions of this Section and the label is not misbranded in accordance with Section 2.20 of the Act. All labels and sketch labels shall be submitted to the Springfield office of the Department for approval.

- j) The Department shall approve temporary labeling as stated in 9 CFR 381.132(f). Labeling which has received temporary approval shall not be used beyond the temporary approval period unless the printer or manufacturer of the label is unable to provide the official establishment with the permanent labels before the expiration of the temporary approval.

- k) A copy of each label submitted for approval shall be accompanied by a statement showing the common or usual names, the kinds and percentages of the ingredients comprising the poultry product and a statement indicating the method or preparation of the product with respect to which the label is to be used. Laboratories used for chemical analysis shall be any approved laboratory as defined in 8 Ill. Adm. Code 20.1.

- l) The Department does not approve terms for generic labeling and considers the approval of terms as generic to be the responsibility of the federal government.

- m) The Department does not issue a list of approved packaging materials and will permit for use any packaging material which has been approved by the U.S. Department of Agriculture (see 9 CFR 317.24 (1997)).

- n) Labels and devices approved for use pursuant to Section 125.90 and this Section shall be disposed of only when such labels or devices have been mutilated or damaged or when the establishment ceases to do business. Such labels and devices shall be given to the inspector for disposition.

- o) The inspector shall grant authorization to transport labels, wrappers and containers bearing official marks from one official establishment to another official establishment provided the official establishment provides to the inspector the information required in 9 CFR 381.138 so

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- that the inspector can notify the inspector at the destination point.
- p) Labels to be used for the relabeling of inspected and passed product shall be permitted to leave the official establishment when the product must be relabeled because the original labels have become mutilated or damaged. The official establishment shall reimburse the Department for any overtime costs, if applicable, involved for the inspector to supervise the relabeling of a product. The overtime charges shall be as set forth in Section 125.80.
- q) Labeling of custom slaughtered and/or custom processed poultry and/or poultry products and the containers containing custom slaughtered and/or custom processed poultry products shall be as set forth in Section 5 of the Act.
- r) The Department shall approve only those abbreviations for marks of inspection as specifically stated in Section 2.26(j)(3), (4), (5) and (9) of the Act.

(Source: Amended by peremptory rulemaking at 24 Ill. Reg. 5699, effective March 14, 2000)

#### Section 125.390 Entry of Articles Into Official Establishments; Processing Inspection and Other Reinspections; Processing Requirements

- a) The Department incorporates by reference 9 CFR 381.145(b) through 381.146, 381.148, 381.149, 381.150 through 381.151, 381.200, 381.300 through 381.311 (1997; 62 FR 33744, effective August 22, 1997; 62 FR 45016, effective September 24, 1997; 64 FR 732, effective March 8, 1999; 64 FR 72168, effective January 24, 2000; 65 FR 2284, effective February 22, 2000).
- b) No poultry or poultry product shall be brought into an official establishment unless it is inspected or has been prepared in an official establishment or in a federally licensed establishment and is identified by an official inspection legend as set forth in Section 125.90, the federal inspection legend, or is exempt from inspection as stated in Section 125.110. However, poultry or poultry products imported into the United States may be transported to an inspection site in accordance with the provisions of 9 CFR 381.200 for reinspection.
- c) Poultry and poultry products received in an official establishment during the absence of the inspector shall be identified as set forth in Section 125.360 and, unless exempt from inspection, shall not be used or prepared until they have been reinspected. Any poultry and/or poultry product originally prepared at any official establishment may not be returned to any part of such establishment other than the receiving area until it has been reinspected and passed by the inspector.
- d) The official establishment shall maintain an inventory of non-poultry

## DEPARTMENT OF AGRICULTURE

## NOTICE OF PEREMPTORY AMENDMENTS

items (e.g., spices, preservatives) which are received at the official establishment. Any product that is brought on the premises of an official establishment contrary to the provisions of this Section shall be removed immediately from such establishment by the operator of the establishment.

- e) Reinspections of poultry and/or poultry products within the official establishment shall be performed through the use of a random digit table.
- f) Poultry feet shall be approved for processing for human food in accordance with the procedures set forth in the "Meat and Poultry Inspection Manual" as adopted by the Department in Section 125.20.
- g) The Department does not approve new substances to be used on poultry or in poultry products, their uses or the levels of use of an approved substance. Such substances will be permitted to be used if they will not adulterate the poultry and/or poultry product in accordance with Section 2.11 of the Act and are in compliance with the provisions of this Section.
- h) Ready-to-heat-and-eat poultry or stuffed ready-to-roast poultry may be moved from an official establishment prior to freezing in accordance with the provisions of Section 125.330 (specifically the incorporated language in 9 CFR 381.66(f)(3)).
- i) Any method of cleaning immediate containers used for the holding of poultry and poultry products shall be approved if such method is in compliance with the sanitation requirements (see Section 125.330).
- j) Canned poultry products which may be processed without steam-pressure cooking shall be those products as stated in the "Meat and Poultry Inspection Manual" as adopted by the Department in Section 125.20.
- k) The inspector shall permit lots of canned poultry products to be shipped from the official establishment prior to the completion of the incubation period on the representative samples in accordance with the specific provisions in 9 CFR 381.309.
- l) Disinfectants which may be used in an official establishment shall be those products on the "List of Proprietary Substances and Nonfood Compounds" as adopted by the Department in Section 125.20.

(Source: Amended by peremptory rulemaking at 24 Ill. Reg. 5699, effective March 14, 2000)

## STATE BOARD OF EDUCATION

## NOTICE OF PUBLIC HEARINGS ON PROPOSED RULES

- 1) Heading of the Part: Certification
- 2) Code Citation: 23 Ill. Adm. Code 25
- 3) Register Citation to Notice of Proposed Rules: 24 Ill. Reg. 4302; March 24, 2000

4) Dates, Times and Locations of Public Hearings:

Thursday, March 30, 2000      Wednesday, April 5, 2000  
 7:00 - 9:00 p.m.      7:00 - 9:00 p.m.  
 Armington Center      East Campus Auditorium  
 Greenville College      Lockport Township High School  
 315 East College Avenue      1333 East 7th Street  
 Greenville, Illinois      Lockport, Illinois

Thursday, April 6, 2000      Monday, April 10, 2000  
 7:00 - 9:00 p.m.      4:00 - 6:00 p.m.  
 Auditorium      Horace Mann Elementary School  
 Kankakee Community College      8050 South Chappel Avenue  
 River Road      Chicago, Illinois  
 Kankakee, Illinois

Tuesday, April 11, 2000      Thursday, April 13  
 4:00 - 6:00 p.m.      7:00 - 9:00 p.m.  
 Nicholas Senn High School      East Campus  
 5900 North Glenwood Avenue      Carbondale High School  
 Chicago, Illinois      1301 East Walnut Street  
    Carbondale, Illinois

Tuesday, April 18, 2000      Thursday, April 27, 2000  
 7:00 - 9:00 p.m.      7:00 - 9:00 p.m.  
 Addison Trail High School      Limestone Community High School  
 213 North Lombard Road      4201 South Airport Road  
 Addison, Illinois      Bartonville, Illinois

Wednesday, May 3, 2000      Thursday, May 4, 2000  
 7:00 - 9:00 p.m.      7:00 - 9:00 p.m.  
 Auditorium      Byron High School  
 Waukegan High School      696 North Colfax  
 2325 Brookside Avenue      Byron, Illinois  
 Waukegan, Illinois

- 5) Other Pertinent Information: The services of a sign language interpreter will be available if requested. To request an interpreter for a specific hearing, interested parties may call 217/557-8393. Those presenting

## STATE BOARD OF EDUCATION

## NOTICE OF PUBLIC HEARINGS ON PROPOSED RULES

testimony are requested to supply written copies of their remarks also, if possible.



DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF CORRECTIONS TO NOTICE ONLY

- 1) Heading of the Part: Hearing Screening
- 2) Code Citation: 77 Ill. Adm. Code 675
- 3) The Notice of Adopted Amendments being corrected appeared at 24 Ill. Reg. 4956, dated March 24, 2000
- 4) The information being corrected is as follows: The comment for item #11 on the Notice of Adopted Amendments is being corrected. In addition to the changes described in the comment to item #11 of the Notice for this adopted rulemaking, the difference between the proposed and final version included other changes. Due to numerous public comments against the proposed changes to Sections 675.120 and 675.130, those proposed changes were withdrawn. In addition, provisions requiring hearing screening for children in grade 3 were retained. Further, children in grade 8 were added to the list of grades for which hearing screening is recommended.

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
NOTICE OF PUBLICATION ERROR  
DEPARTMENT OF REVENUE

- 1) Heading of the Part: Cigarette Tax Act
- 2) Code Citation: 86 Ill. Adm. Code 440.10
- 3) Register citation of proposed rulemaking: February 25, 2000, 24 Ill. Reg. 3096
- 4) Explanation: The rulemaking cited above proposed to increase cigarette tax rates. In printing this rulemaking in Issue 9 of the *Illinois Register*, subsection (g), which states the totals for the rates, was inadvertently misprinted. The corrected text is printed below. The Joint Committee on Administrative Rules regrets any confusion this printing error may have caused.
- g) The total of these rates is 29 ~~15~~ mills per cigarette; or 58¢ ~~30¢~~ on a package of 20 cigarettes.

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

## SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of March 14, 2000 through March 20, 2000 and have been scheduled for review by the Committee at its April 11, 2000 meeting in Springfield. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

Second Notice Expires	Agency and Rule	Start Of First Notice	JCAR Meeting
4/27/00	Department of Human Services, Americans with Disabilities Act Grievance Procedure (4 Ill Adm Code 300)	1/21/00 24 Ill Reg 958	4/11/00
4/27/00	Department of Human Services, Recipient Rights (59 Ill Adm Code 111)	1/21/00 24 Ill Reg 975	4/11/00
4/27/00	Department of Human Services, Eligibility (89 Ill Adm Code 682)	1/3/00 24 Ill Reg 19	4/11/00
4/27/00	Department of Human Services, Provider Requirements, Type Services, and Rates of Payment (89 Ill Adm Code 686)	1/7/00 24 Ill Reg 211	4/11/00
4/27/00	Department of Children and Family Services, Licensing Standards for Child Welfare Agencies (89 Ill Adm Code 401)	1/14/00 24 Ill Reg 399	4/11/00
4/28/00	Capital Development Board, Prequalification of Architects and Engineers (44 Ill Adm Code 980)	1/28/00 24 Ill Reg 1407	4/11/00
4/29/00	Department of Human Services, General Administrative Provisions (89 Ill Adm Code 10)	1/21/00 24 Ill Reg 965	4/11/00
5/3/00	Department of Public Health, Emergency Medical Services and Trauma Center Code (77 Ill Adm Code 515)	12/10/99 23 Ill Reg 14276	4/11/00

## PROCLAMATIONS

2000-28 (Revised)  
LICENSED PRACTICAL NURSE WEEK

and WHEREAS, the maintenance of good health is of primary concern to everyone; and WHEREAS, the role of the licensed practical nurse, in caring for people's health needs, has advanced in responsibility and complexity; and WHEREAS, the Licensed Practical Nurse Association of Illinois encourages the continuance of education to ensure competency among its members; and WHEREAS, the Licensed Practical Nurse Association of Illinois is the voice for LPN's in the health care field and maintains the welfare of the LPN; and WHEREAS, the Licensed Practical Nurse Association of Illinois is a member of National Federation of Licensed Practical Nurses; and WHEREAS, the Licensed Practical Nurse Association of Illinois is holding its annual convention Lpn 26-30, 2000, in Harvey, Illinois at the Ramada Inn. This year's theme is "Lpn the Light of the Future"; THEREFORE, I, George Ryan, Governor of the State of Illinois, proclaim March 26-31, 2000 as LICENSED PRACTICAL NURSE WEEK in Illinois. Issued by the Governor March 3, 2000. Filed by the Secretary of State March 14, 2000.

2000-55 (Revised)  
SEVERE WEATHER PREPAREDNESS WEEK

WHEREAS, tornadoes and related phenomena are the most devastating natural disasters that regularly affect Illinois; and WHEREAS, Illinois is one of the hardest-hit states in the nation in terms of tornadoes and severe weather; and WHEREAS, March 18, 2000, is the 75th anniversary of the deadliest tornado in U.S. history -- the Tri-State Tornado that killed 689 people in Missouri, Illinois and Indiana; and WHEREAS, improved warning capabilities and public awareness have greatly reduced the number of weather-related fatalities in Illinois; and WHEREAS, the Illinois Emergency Management Agency, other State agencies, the National Weather Service, county and local governments, private non-profit organizations and civic groups have combined efforts to increase public awareness and implement emergency planning to combat the deadly effects of tornadoes; and WHEREAS, all Illinois residents are urged to become familiar with the effects of tornadoes and other severe weather threats and to create or review their severe weather plans at home, school and in the workplace; THEREFORE, I, George Ryan, Governor of the State of Illinois, proclaim March 12-18, 2000 as SEVERE WEATHER PREPAREDNESS WEEK in Illinois. Issued by the Governor March 2, 2000. Filed by the Secretary of State March 14, 2000.

2000-95  
CHICAGO BUSINESS OPPORTUNITY DAYS

WHEREAS, the 33rd Annual Chicago Business Opportunity Fair, which is of special interest to Chicago-based businesses, will be held April 19-20, 2000; and

WHEREAS, the fair will provide minority suppliers and purchasing personnel from major buying organizations the opportunity to meet and exchange information about buying and selling needs; and

WHEREAS, Chris Richardson, President and Chief Executive Officer of Square D Schneider Electric, will serve as Chairperson of the fair's Sponsors Committee; and

WHEREAS, the 33rd Annual Business Opportunity Fair assists in advancing the year-round efforts of the Chicago Minority Business Development Council, Inc., an organization devoted to stimulating minority purchasing in Chicago and the sponsor of the fair; and

WHEREAS, the Minority Business Committee of the Chicago Minority Business Development Council will hold its 22nd Annual Awards Program on April 20, 2000, in honor of public and private sector representative for their contributions to minority suppliers' growth and development;

WHEREFORE, I, George Ryan, Governor of the State of Illinois, proclaim April 19-20, 2000 as CHICAGO BUSINESS OPPORTUNITY DAYS in Illinois.

Issued by the Governor March 2, 2000.  
Filed by the Secretary of State March 14, 2000.

## 2000-96

## FINANCIAL LITERACY FOR YOUTH MONTH

WHEREAS, the average teen in the United States spends \$3,500 each year, and 25 percent of 18- and 19- year olds have their own credit cards; and

WHEREAS, high school seniors frequently are unprepared for many of the critical financial decisions they need to make after they graduate; and

WHEREAS, nationally, for more than a quarter of a century, many Americans have been challenged to save even 5 percent of their income-in contrast to the 10 percent recommended by the majority of financial planners; and

WHEREAS, the Jump Start Coalition and the Cooperative Extension System-USDA are sponsoring "Financial Literacy for Youth Month" to encourage educational programs to give young people the financial tools they need to live balanced, responsible and rewarding lives; and

WHEREAS, this public awareness effort will help teens learn about the financial planning process and contribute to their personal financial stability and, consequently, contribute to the financial stability of Illinois;

WHEREFORE, I, George Ryan, Governor of the State of Illinois, proclaim April, 2000 as FINANCIAL LITERACY FOR YOUTH MONTH in Illinois.

Issued by the Governor March 2, 2000.  
Filed by the Secretary of State March 14, 2000.

## 2000-97

## ABSOLUTELY INCREDIBLE KID DAY

WHEREAS, the Metropolitan Chicago Council of Camp Fire, founded in 1912, and the Illinois Prairie Council of Camp Fire, founded in 1917, teaches boys and girls to become caring, confident youths and future leaders; and

WHEREAS, Camp Fire Boys and Girls is commended for the valuable programs offered to young people in the State of Illinois and throughout the nation, and for the many services these young people perform for their communities through Camp Fire; and

WHEREAS, through contemporary programs and by speaking out on issues affecting youth and their families, Camp Fire Boys and Girls helps youths cope with their changing world; and

WHEREAS, in Camp Fire, the choices and opportunities are inclusive to boys and girls; and

WHEREAS, Camp Fire Boys and Girls, the national organization, will sponsor Absolutely Incredible Kid Day on March 16, 2000; and

WHEREAS, Camp Fire Boys and Girls has issued a call to action, asking every adult in America to write a letter to a child or children on March 16, 2000; and

WHEREAS, Camp Fire Boys and Girls has established the goal that every child receive a letter on March 16, 2000;

WHEREFORE, I, George Ryan, Governor of the State of Illinois, proclaim March 16, 2000 as ABSOLUTELY INCREDIBLE KID DAY in Illinois.

Issued by the Governor March 3, 2000.  
Filed by the Secretary of State March 14, 2000.

## 2000-98

## NEIGHBORHOOD HOUSING SERVICES OF CHICAGO DAY

WHEREAS, since 1975, the Neighborhood Housing Services of Chicago, Inc., Chicago's largest neighborhood revitalization organization, has served more than 118,000 Chicagoans and helped more than 1,700 Chicagoans become first time homeowners; and

WHEREAS, NHS's mission is to rekindle hope in a neighborhood's future, to restore conventional and local investment in the community, and to leave behind empowered, self-reliant homeowners; and

WHEREAS, NHS is a nonprofit organization working in partnership with business, government, and neighborhood residents to revitalize Chicago's low-to moderate-income neighborhoods; and

WHEREAS, this year, NHS will celebrate its 25th Anniversary on March 15, 2000 with an awards dinner at Navy Pier;

WHEREFORE, I, George Ryan, Governor of the State of Illinois, proclaim March 15, 2000 as NEIGHBORHOOD HOUSING SERVICES OF CHICAGO DAY in Illinois.

Issued by the Governor March 3, 2000.  
Filed by the Secretary of State March 14, 2000.

## 2000-99

## SHARED HOUSING WEEK

WHEREAS, shared housing offers affordable community-based living for hundreds of Illinois residents; and

WHEREAS, shared housing is a living arrangement that matches unrelated persons to share homes and apartments or a group shared residence; and

WHEREAS, shared housing offers older adults, people with disabilities and other special populations a housing alternative that enables them to remain in

the community; and

WHEREAS, shared housing provides an economical housing option to people of all ages in transitional periods, such as divorce, loss of a spouse, company downsizing and educational pursuits; and

WHEREAS, group shared residences offer meals, housekeeping, laundry and other types of assistance which promote independence and self-determination for older persons and delay entry into an institutional medical setting; and

WHEREAS, shared housing programs are sponsored by recognizing not-for-profit community organizations where applicants are carefully screened and monitored to insure a compatible match or a comfortable group living arrangement; and

WHEREAS, the Illinois Shared Housing Network recognizes that shared housing helps the State of Illinois increase the number of housing units that are affordable and available to its residents;

THEREFORE, I, George Ryan, Governor of the State of Illinois, proclaim May 14-20, 2000 as SHARED HOUSING WEEK in Illinois.

Issued by the Governor March 3, 2000.  
Filed by the Secretary of State March 14, 2000.

#### 2000-100

##### ILLINOIS SECURITY CHIEFS ASSOCIATION DAY

WHEREAS, the Illinois Security Chiefs Association (ISCA) was founded in 1960 as a not-for-profit organization that provides its members with an opportunity to talk with high-ranking officials and discuss topics relating to the security profession; and

WHEREAS, the ISCA is comprised of professionals in the security arena, individuals from "both the private and public sectors and law enforcement, as well as individuals who are responsible for the administration of loss prevention programs for business and industry"; and

WHEREAS, the ISCA's membership consists of highly motivated and dedicated individuals who wish to keep abreast of the latest information pertaining to guard services and security technology; and

WHEREAS, this year the 31st Annual Awards Banquet will be on April 8, 2000, and the ISCA will honor individuals for outstanding achievements and service from private security and public law enforcement;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim April 8, 2000, as ILLINOIS SECURITY CHIEFS ASSOCIATION DAY in Illinois.

Issued by the Governor March 6, 2000.  
Filed by the Secretary of State March 14, 2000.

#### 2000-101

##### IRISH AMERICAN HERITAGE MONTH/ST. PATRICK'S DAY

WHEREAS, by 1776 Nearly 300,000 natives of Ireland had immigrated to the United States; and

WHEREAS, at least eight signers of the Declaration of Independence were of Irish origin; and

WHEREAS, the Irish and their descendants have helped to enrich the quality of life in the United States and have served with distinction in all areas of

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American society; and

WHEREAS, Irish Americans such as Thomas O'Shaughnessy, Louis Sullivan, Walter Farrell and Finley Peter Dunne have added to Illinois' culture; and

WHEREAS, Irish Americans helped to construct several major Illinois projects including the Illinois Michigan Canal; and

WHEREAS, there will be more than 10 St. Patrick's Day parades across Illinois including the Grand Parade XV sponsored by the St. Patrick Society Quad Cities USA, St. Patrick's Day Parade sponsored by the Irish Marching Society of Rockford, St. Patrick Parade sponsored by the St. Patrick Society of Peoria, West Suburban Irish St. Patrick's Day Parade sponsored by the West Suburban Irish, St. Patrick's Day Parade sponsored by the Elmhurst St. Patrick's Day Parade Committee, the Northwest Corridor St. Patrick's Day Parade sponsored by the Northwest Corridor St. Patrick's Day Parade Committee, Southside Irish St. Patrick's Day Parade sponsored by the Southside Irish St. Patrick's Day Parade Committee, St. Patrick's Day Parade sponsored by the Lee County Irish Heritage Club, St. Charles St. Patrick's Day Parade co-sponsored by the Downtown St. Charles Partnership and Greater St. Charles Area Chamber of Commerce, Tinley Park Irish Parade sponsored by the Oak Park Avenue Main Street Association and St. Patrick's Day Parade sponsored by the Chicago St. Patrick's Day Committee; and

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim March 2000 as IRISH AMERICAN HERITAGE MONTH and March 17, 2000, as ST. PATRICK'S DAY in Illinois.

Issued by the Governor March 6, 2000.  
Filed by the Secretary of State March 14, 2000.

#### 2000-102 MSC 2000 DAYS

WHEREAS, the MSC 2000 conference presents security training conducted by nationally recognized speakers who will participate in two days of intensive seminars and workshops in private security, public safety and human resources; and

WHEREAS, the MSC conference attendees come from a wide base of security fields from 10 states across America. Conference attendees can earn credit points towards their CHPA and CPP re-certification; and

WHEREAS, MSC 2000 is co-sponsored by the Illinois Security Chiefs Association, the Chicago Chapters of I.A.H.S. and A.S.I.S.; and

WHEREAS, the MSC conference will host their 11th annual conference, "Protection Solutions For A New Century," March 20-21, 2000.

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim March 20-21, 2000, as MSC 2000 DAYS in Illinois.

Issued by the Governor March 6, 2000.  
Filed by the Secretary of State March 14, 2000.

#### 2000-103

##### MUNICIPAL CLERKS WEEK

WHEREAS, the office of the Municipal Clerk, a time-honored and vital part of local government, exists in countries throughout the world; and

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WHEREAS, this office consistently and efficiently serves its local legislative body, the municipal staff and the general public by recording the actions of the council, commissions and committees while maintaining records for reference, inspection and preservation; and

WHEREAS, this office most often performs one or more additional important functions including election administration, finance management, records administration and general administrative services; and

WHEREAS, the Municipal Clerk and staff have continuously updated their skills and technical knowledge to prepare for the challenges of the future; and WHEREAS, it is appropriate that we recognize the accomplishments of this office and call the public's attention to the many services that it performs;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim May 1-6, 2000, as MUNICIPAL CLERKS WEEK in Illinois.

Issued by the Governor March 6, 2000.

Filed by the Secretary of State March 14, 2000.

#### 2000-104

##### PUBLIC HEALTH WEEK

WHEREAS, the improvement in the quality of life and health of our citizens depends on programs and services that emphasize the prevention of disease, disability, and dependence; and

WHEREAS, April 3-7 has been designated as National Public Health Week by the American Public Health Association and other distinguished state and national organizations; and

WHEREAS, the Illinois Public Health Association, together with many other state organizations, has dedicated the first full week of April to showcase public health accomplishments and to hold special events; and

WHEREAS, all observances during the first full week of April will be used as a means to improve understanding about and appreciation for the essential role that public health and population-based programs have in the health care system; and

WHEREAS, the observation is a cooperative effort of the state and local health departments, academic institutions, allied organizations, community groups, and professional and trade associations which have joined together to promote a common interest in public health and a population-focused, community prevention approach to better health care; and

WHEREAS, the Illinois Public Health Association is a voluntary professional society whose members strive to protect and promote personal, community, and environmental health through organized activities in the areas of education, research, and health policy development;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim April 3-7, 2000, as PUBLIC HEALTH WEEK in Illinois.

Issued by the Governor March 6, 2000.

Filed by the Secretary of State March 14, 2000.

#### 2000-105

##### SENATOR WALTER W. DUDYCZ DAY

WHEREAS, Walter W. Dudycz was born on March 11, 1950, in Chicago,

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graduated from Holy Trinity High School, the Chicago Police Academy and received a Bachelor of Arts degree from Northeastern Illinois University; and WHEREAS, he and his wife, Oksana, have two daughters, Valya and Nadya; and WHEREAS, Walter served in the United States Army from 1968 to 1971, including a 12-month tour of duty in Vietnam; and

WHEREAS, since 1971, Walter served as a Chicago Police Officer, holding the rank of detective since 1978 and served as Director of the Cook County Sheriff's Work Alternative Program from 1987 to 1990; and

WHEREAS, Walter is the founder and past president of the Ukrainian-American Police Association, member of Fraternal Order of Police Lodge #7, Polish-American Police Association, Knights of Columbus, Vietnam Veterans of America #209, American Legion Post #740, and VFW Post #3579; and WHEREAS, on March 25, 2000, a reception in honor of Walter will be held at the Fraternal Order of Police Hall;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim March 15, 2000, as SENATOR WALTER W. DUDYCZ DAY in Illinois.

Issued by the Governor March 6, 2000.

Filed by the Secretary of State March 14, 2000.

#### 2000-106

##### STUDENT TECHNOLOGY DAY

WHEREAS, the New Economy is fast, knowledge-based, and service-oriented. It is driven by technological advances and fueled by the skill levels of the workforce; and

WHEREAS, we have the fourth largest technology economy in the nation here in Illinois; and

WHEREAS, the TECH 2000/At&T Students for the Information Age program is dedicated to preparing students for an information-based society; and

WHEREAS, more than 140 Illinois schools and some 300 students will participate in the event to show visitors, including State senators and representatives, how classroom technology is being used to engage students and increase achievement; and

WHEREAS, the ninth annual TECH 2000/At&T Students for the Information Age school technology demonstration will be held at the Illinois State Capitol Building on March 22;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim March 22, 2000, as STUDENT TECHNOLOGY DAY in Illinois.

Issued by the Governor March 6, 2000.

Filed by the Secretary of State March 14, 2000.

#### 2000-107

##### DRINKING WATER WEEK

WHEREAS, safe drinking water is essential to human life; and WHEREAS, for generations, dedicated water treatment operators have actively supported programs and regulations designed to consistently improve both the quantity and quality of safe drinking water available to Illinois residents, as well as millions of visitors annually; and

WHEREAS, protection of drinking water sources were among the first

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WHEREAS, the Maywood Library Association, which was the origin of the Public Library, and was started in December 1874; and

WHEREAS, the object of the Association was the social enjoyment of its members and the establishment and maintenance of a public library and reading rooms; and

WHEREAS, the library has come a long way in the course of its 125-year history, thanks in large part to Andrew Carnegie; and

WHEREAS, over the years, the Library Board of Trustees has worked hard to move the library ahead and the staff has worked hard to implement the will of the board and the needs of the Maywood community. In the past, the citizens of Maywood have put their faith and their tax dollars into a library that has improved steadily through the years and which continues to serve them well; and

WHEREAS, Rose Mosley, Library Board President and Board Trustee of more than 15 years, proclaims that the library board has carried out its mission "people wanted a world class library and that is what they got"; and

WHEREAS, this year the Maywood Public Library District celebrates 125 years of service to the Maywood community by sponsoring an open house;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim March 14, 2000, as MAYWOOD PUBLIC LIBRARY DAY in Illinois.

Issued by the Governor March 7, 2000.

Filed by the Secretary of State March 14, 2000.

#### 2000-110 PI DAY

WHEREAS, mathematics is an integral part of society, and students can greatly benefit from the study of mathematics; and

WHEREAS, in succeeding in mathematics, students will contribute to the continuing development of Illinois and its people; and

WHEREAS, mathematics should be enjoyed and celebrated at Hinsdale Middle School and all schools across the State; and

WHEREAS, many students should be encouraged in their pursuit of mathematical knowledge;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim March 14, 2000, as PI DAY in Illinois.

Issued by the Governor March 7, 2000.

Filed by the Secretary of State March 14, 2000.

#### 2000-111 ZETA PHI BETA SORORITY DAYS

WHEREAS, the Zeta Phi Beta Sorority was founded in 1920 on the campus of Howard University; and

WHEREAS, Zeta Phi Beta Inc. encourages the highest standards of scholarship through scientific, literary, cultural and educational programs; promotes service projects on college campuses and in the community; fosters sisterhood; and exemplifies the ideal of finer womanhood; and

WHEREAS, a private nonprofit organization, Zeta Phi Beta Sorority is incorporated in Washington, D.C. and in the State of Illinois; and

WHEREAS, Zeta Phi Beta Sorority was the first to charter international

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community projects undertaken as new settlers moved into the Illinois Territory nearly two centuries ago; and

WHEREAS, programs to regulate safety of drinking water have been in place in Illinois for approximately a century; and

WHEREAS, there are 4,474 dedicated men and women currently certified as drinking water operators in Illinois; and

WHEREAS, Illinois citizens can confidently look forward to a new century of safe, clean drinking water delivered in amounts satisfactory to meet everyday human needs as well as the demands of successful industries;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim May 7-13, 2000, as DRINKING WATER WEEK in Illinois.

Issued by the Governor March 7, 2000.

Filed by the Secretary of State March 14, 2000.

#### 2000-108 MARJORIE E. SODERMANN DAY

WHEREAS, Marjorie E. Sodemann has been a State of Illinois employee for eight years, holding many offices serving the State and its citizens; and

WHEREAS, she was the Private Sector Auditor for the Department of Accounting Revenue at the Illinois Secretary of State from 1991 to 1994; and

WHEREAS, Mrs. Sodemann was the Manager of Vehicle Services at the Secretary of State from 1994 to 1997; and

WHEREAS, she was the Director of the Department of Index at the Secretary of State from 1997 to 1999; and

WHEREAS, she was the Senior Advisor for Aging and Local Government for Governor George H. Ryan from 1999 to 2000 upon her retirement; and

WHEREAS, she was the Champaign Township Supervisor from 1977 to 1991, a member of the Champaign County Board from 1978 to 1991 serving on the Justice and Public Safety, Cable Television, and Willard Airport Committees, and a member of the National Association of Counties from 1978 to 1991 serving on the Taxation and Finance Steering and Courts Committees. She was active in many philanthropic organizations including Champaign Rotary Club West, Junior League of Champaign-Urbana, Illinois Women in Government, Champaign County Chamber of Commerce and Champaign-Urbana Civic Symphony Guild; and

WHEREAS, Marge is the wife of George Sodemann, a mother to Pamela, Steven, Nancy and Scott, and the grandmother to Teri, Kara, Erica, Kirsten, Drew, Todd and Gina; and

WHEREAS, Marge Sodemann enjoys University of Illinois athletic events, visiting her family, sightseeing to foreign cities and golfing in Hilton Head; and

WHEREAS, the State of Illinois and its residents have benefited from and appreciate her dedication and hard work;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim March 7, 2000, as MARJORIE E. SODERMANN DAY in Illinois.

Issued by the Governor March 7, 2000.

Filed by the Secretary of State March 14, 2000.

#### 2000-109 MAYWOOD PUBLIC LIBRARY DAY

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chapters, like those in West Africa and Germany, and formed adult and youth auxiliary groups, the Amiae Archonettes, Amicettes and Pearlettes; and WHEREAS, Zeta Phi Beta's purpose is to foster the ideals of service, charity, scholarship, civic and cultural endeavors, sisterhood, and finer womanhood. These ideals are reflected in the sorority's national programs for which its members and auxiliary groups provide untold hours of voluntary service to community outreach programs, scholarship funds, organized charities and legislation for social and raising civic change;

WHEREAS, Zeta sponsors a regional conference each year to allow members the opportunity to generate ideas and create programs to carry on the tradition of the organization's founding principles. This year's conference will take place on April 27-29 at the Hyatt Regency McCormick Place in Chicago, Illinois. The conference will be hosted by Zeta Zeta Chapter (Dolton, Illinois) and Zeta Tau Zeta Chapter (Chicago);

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim April 27-29, 2000, as ZETA PHI BETA SORORITY DAYS in Illinois.  
 Issued by the Governor March 7, 2000.  
 Filed by the Secretary of State March 14, 2000.

## 2000-112

## AGRICULTURE WEEK/AGRICULTURE DAY

WHEREAS, agriculture is an important part of life in Illinois, contributing billions of dollars to the State's economy and employing nearly 1.5 million Illinoisans with approximately 1,400 food-producing companies in the state; and

WHEREAS, Illinois is gifted with some of the richest agricultural resources in the world with more than 28 million acres of land in farms; and WHEREAS, Illinois farmers are leaders in the production of corn and soybeans, which make up about one-fourth of all United States agricultural exports, and are leaders in livestock production and natural resource production; and

WHEREAS, Illinois ranks near the top in the nation in production agriculture and agricultural processing and ranks number one among all states in the production of ethanol; and

WHEREAS, the week of March 19-25, 2000, is designated as National Agriculture Week and March 23, 2000, is designated as Illinois' Agriculture Day; THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim March 19-25, 2000, as AGRICULTURE WEEK and March 23, 2000, as AGRICULTURE DAY in Illinois.

Issued by the Governor March 8, 2000.

Filed by the Secretary of State March 14, 2000.

## 2000-113

## BANGLADESH DAY

WHEREAS, Illinois is home to several thousand Bangladeshi emigrants; and WHEREAS, those individuals and families that struggled for the freedom of their country should be commended; and

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WHEREAS, the Bangladeshi community in the State of Illinois hopes to enhance Bangladeshi culture, assist Bangladeshi emigrant students and visitors, and develop and promote friendship and relationships among the citizens of Illinois; and

WHEREAS, the 29th Independence Day of Bangladesh will be celebrated in Illinois on March 25, 2000, on the anniversary of the country's independence; THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim March 25, 2000, as BANGLADESH DAY in Illinois in honor of the anniversary of the 29th anniversary of Bangladesh independence.

Issued by the Governor March 8, 2000.

Filed by the Secretary of State March 14, 2000.

## 2000-114

## HONG KONG CLUB DAY

WHEREAS, the Hong Kong Club formed six years ago to promote business between Hong Kong and Illinois has been an asset to the State of Illinois; and WHEREAS, many contributions of Asian Americans have helped to bring our State the prosperity and generosity which we enjoy year-around; and WHEREAS, the Hong Kong Club should be commended on its continued effort to enhance community relations within the State of Illinois; and

WHEREAS, the Hong Kong Club will celebrate its annual dinner on March 17, at the Seventh Annual Banquet of the Hong Kong Club;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim March 17, 2000, as HONG KONG CLUB DAY in Illinois.

Issued by the Governor March 8, 2000.

Filed by the Secretary of State March 14, 2000.

## 2000-115

## NEW MEMBERS CHRISTIAN EDUCATION DAY

WHEREAS, Salem Baptist Church of Chicago was organized January 13, 1985, at 8201 South Jeffery Boulevard and relocated to 11800 South Indiana Avenue in Chicago on July 1, 1990; and

WHEREAS, Salem Baptist Church of Chicago sponsors a course within its Membership Development Department for its new members to strengthen them in their spiritual faith; and

WHEREAS, more than 200 members at this graduation class have completed the 27-Week Training For Christian Service Course; and

WHEREAS, Lanette D. Haskin, New Members Department Superintendent has developed, supervised, and nurtured the New Members program for the past eight years; and

WHEREAS, the Reverend James T. Weeks, Pastor, should be commended for his vision and leadership;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim March 24, 2000, as NEW MEMBERS CHRISTIAN EDUCATION DAY in Illinois.

Issued by the Governor March 8, 2000.

Filed by the Secretary of State March 14, 2000.

## 2000-116

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